



Department for
Digital, Culture
Media & Sport

Conversion to a Charitable Incorporated Organisation

Consultation Report

September 2017

This information is also available on the following website:

<https://www.gov.uk/government/consultations/converting-to-a-charitable-incorporated-organisation>

© Crown copyright 2017

Produced by Department for Digital, Culture, Media and Sport

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from laura.kennedy@culture.gov.uk

Contents

Foreword	3
Executive Summary	4
Background	5
Consultation Process	7
Consultation Responses	8
Overview	8
Summary of changes to the regulations	8
Analysis by Question	9
Conclusion	29

Foreword

The Government is committed to supporting charities and making them easier to run, through reducing their regulatory burden and associated costs they face. Our goal is to support the sector to be more independent, more resilient and more sustainable.

The Charitable Incorporated Organisation (CIO) legal structure has proven to be very popular for new and existing unincorporated charities. Over 12,500 new CIOs have been established since its introduction in December 2012 and CIOs now account for over 50% of new charity registrations.¹

Providing charitable companies and Community Interest Companies (CICs) with the opportunity to convert to a CIO is essential to this commitment. The new regulations will ensure a smooth transition to a structure that will allow charities to operate with their own legal identity and avoid the complexity of dual regulatory requirements.

We hope that the option of conversion will prove popular for existing charitable companies and Community Interest Companies.

Office for Civil Society

¹ Charity Commission: <https://www.gov.uk/government/organisations/charity-commission>, accessed 01/08/16

Executive Summary

The Department for Digital, Culture, Media and Sport (DCMS) would like to thank all those who responded to this consultation. All participants provided constructive input on the draft regulations which will allow charitable companies and Community Interest Companies (CICs) to convert to a Charitable Incorporated Organisation (CIO).

The consultation asked for responses from all parts of the charitable sector and from the public. The responses have contributed to the shape of the final regulations.

The consultation aimed to confirm whether there was a strong demand from charitable companies and CICs to have the option of conversion to a CIO. It also sought views on the content of the draft regulations, the proposed approach to phasing in applications to the Charity Commission and the assessment of impact.

The overall response to the consultation was very positive, with 95% of respondents agreeing that the draft regulations were needed and that there would be demand for a simple conversion process. Respondents also put forward a number of useful suggestions on the draft regulations and valuable feedback on the assessment of impact.

We made some minor changes to the draft regulations as a result of the comments raised through this consultation. This includes removing the requirement for charitable companies to have filed their most recent accounts or reports with Companies House before an application is 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.

We have also amended the regulations to include a number of suggested circumstances where an application should be refused. This list is not intended to be exhaustive; the Charity Commission will still have the discretion to review other situations and determine whether applications should be approved on a case by case basis.

Finally, we also propose to amend the phasing for applications. Many respondents agreed with the rationale for phasing in applications (to help the Charity Commission manage demand with limited resources), but felt that smaller charities, rather than larger charities should be prioritised. It was widely felt that smaller charities are disproportionately affected by the administrative costs associated with dual registration. The phasing for applications has therefore been revised to address these concerns. However, to ensure that the volume of applications can be sufficiently managed, the 'banding' or thresholds for applications has also been narrowed.

Background

Legal Framework

The consultation is concerned with the introduction of secondary legislation under the Charities Act 2011 (the 2011 Act) which will provide a framework for two types of structure, charitable companies and CICs, to convert to a charitable incorporated organisation (CIO) should they wish to do so.

The Charities Act 2006 (the 2006 Act) set out the broad legal framework for the CIO and was consolidated into the Charities Act 2011 (the 2011 Act). The 2011 Act provides the Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport with a power to make regulations in relation to the conversion of charitable companies and CICs into CIOs.

Section 234 of the 2011 Act permits the regulations to make provision for the conversion of a CIC into a CIO and its registration as a charity. Section 246 of the 2011 Act allows the regulations to make further provisions for the conversion of a charitable company and CIC into a CIO, and section 231(3) of the 2011 Act permits the regulations to make provision about circumstances where it would not be appropriate to grant an application for conversion.

In accordance with section 348(4) of the 2011 Act, the Minister must consult such persons or bodies he considers appropriate before making regulations. We have therefore consulted with various government departments and external stakeholders as well as seeking the views of the public and other interested parties in finalising these regulations.

Charitable Incorporated Organisation (CIO) Structure

The CIO is a relatively new form of incorporated legal structure that is designed to meet the particular needs of a charity and is only available to charities. The corporate structure provided by the CIO meets a demand from the charitable sector for a structure which gives a charity a legal personality of its own, enabling it to conduct business in its own name, rather than in the names of its trustees.

The capacity and powers of an incorporated charity are also clearer than those of an unincorporated charity and it can be easier for people dealing with an incorporated charity to assess the credit risk of doing so. The members and trustees/directors of an incorporated charity are usually personally safeguarded from the financial liabilities it incurs, which is not the case for unincorporated charities.

The other main option to achieve corporate structure is for charities to incorporate as a company limited by guarantee under company law. However this means that the charity is subject to both company law and charity law requirements which results in charities having to submit to two regulatory and reporting systems. A CIO only has to register with the Charity Commission (“the Commission”) and comply with the requirements of charity law.

Since the introduction of the CIO legal structure in 2013 it has proven to be a very popular choice of structure for new and existing unincorporated charities. Over 7,900 new CIOs have been established since its introduction and it now accounts for over 50% of new charity registrations. It is expected that the option of conversion will be similarly popular for charities that have opted for the company structure and to a lesser extent for CICs.

Proposed Regulations

The aim of the draft regulations is to allow CICs and charitable companies to convert more easily to CIOs and to make the process as quick and simple as possible.

There is currently no conversion process available for CICs and charitable companies to become CIOs. Instead, charities must set up a new CIO with the same charitable purpose as the original entity, transfer the assets of the original charity to the new CIO (once liabilities are settled or they have secured relevant permissions to transfer the liabilities to the new entity) and then wind up the original charity.

This process is less attractive to charities because it potentially requires time, the renegotiation of contractual obligations, new bank accounts and charity numbers and associated additional costs. It is a particular problem for smaller charities because they are more likely to have fewer resources and less capacity to deal with the issues which could arise from the transfer and this is of concern because smaller charities are believed to be the part of the sector which is most likely to wish to transfer to the CIO structure.

Community Interest Companies (CICs) cannot be charities, so the conversion process proposed for CICs is slightly different to the conversion process for existing charitable companies (which are for the most part already registered charities), as it will entail the Charity Commission assessing whether the proposed CIO that will be formed by the CIC, would be a charity. Charitable companies that have not previously applied to register will need to be assessed.

Consultation Process

The Cabinet Office consulted across the UK on the draft regulations which comprise of:

- The Charitable Incorporated Organisations (Conversion) Regulations;
- The Charitable Incorporated Organisations (Consequential Amendments) Order;
- The Index of Company Names (Listed Bodies) (England and Wales) Order.

The draft regulations were made available on GOV.UK, alongside the consultation document. The consultation was open to all members of the public.

The consultation ran for ten weeks from 1 April to 10 June 2016 and focused on the following areas:

- The level of support for the draft regulations;
- The likely demand for the new conversion process;
- Views on any measures in the draft regulations which should be removed, changed or are considered missing;
- The proposed phasing in of applications for conversion;
- The Government's assessment of the impact of the legislation.

Following an analysis of the responses to the consultation, this document was prepared to capture and respond to issues raised. The views of respondents have been taken into account in preparing the final regulations and Impact Assessment.

Policy responsibility for charity law and regulation transferred from the Cabinet Office to the Department for Digital, Culture, Media and Sport in July 2016.

Consultation Responses

Overview

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.

Responses from the majority of stakeholders were positive. Most were supportive of the policy intent and offered proposals for refining the requirements of the regulations.

Summary of Changes to the Regulations

The following changes have been made to the draft regulations:

- We have removed the requirement for charitable companies in section 11(2)(a) to have filed their most recent accounts or reports with Companies House before an application is granted. We will retain the requirement to refuse an application if an organisation is in *default* of any requirement to send documents or information to the registrar or Charity Commission.
- We have also included a number of suggested circumstances where an application should be refused. This list is not intended to be exhaustive; the Commission will still have the discretion to review other situations and determine whether applications should be approved on a case by case basis.
- We have taken out references to the Companies Act 1985.
- We have added Scottish Charitable Incorporated Organisations (SCIOs) to the Index of Company Names.

In addition, the proposed phasing for applications for conversion have been amended as follows:

- 1 January 2018: Charitable companies with an annual income of less than £12,500;
- 1 March 2018: Charitable companies with an annual income between £12,500 and £25,000;
- 1 May 2018: Charitable companies with an annual income between £25,000 and £100,000;
- 1 June 2018: Charitable companies with an annual income between £100,000 and £250,000;
- 1 July 2018 Charitable companies with an annual income between £250,000 and £500,000;

- 1 August 2018: Charitable companies with an annual income greater than £500,000;
- 1 September 2018: Community Interest Companies.

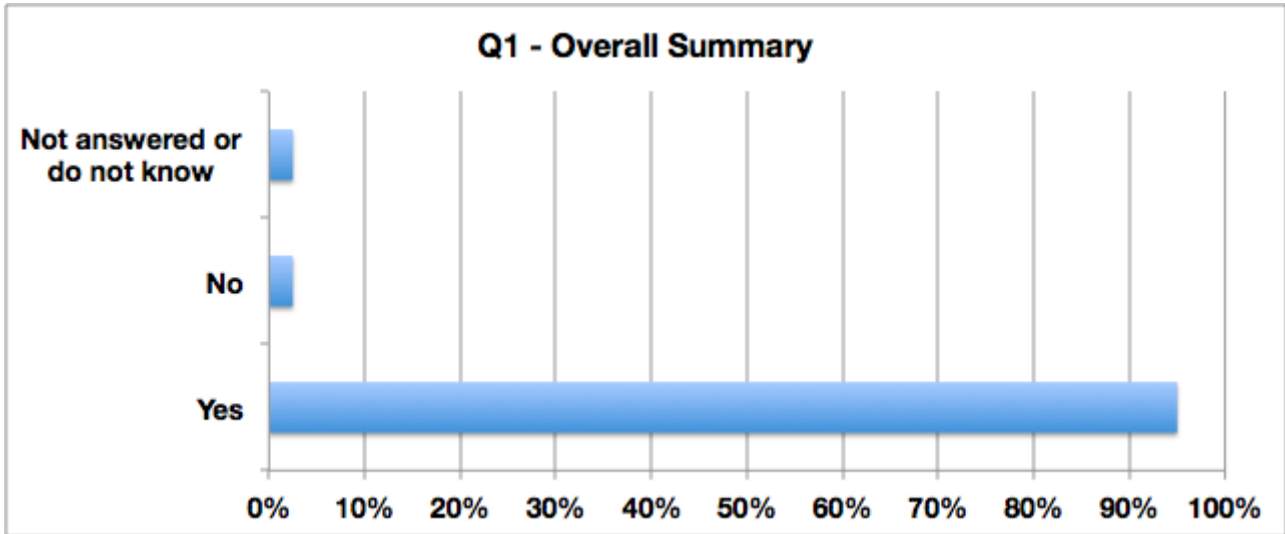
Analysis by Question

While not all respondents answered every question asked in the consultation document, there were a sufficient number of responses to draw conclusions and inform the final set of regulations.

Where bodies did not provide a response or did not feel they were able to answer a question, these were coded as 'not answered or do not know'. Analysis of written responses and specific comments for each question is further detailed below.

Question 1: Support for the Draft Regulations

Do you support the introduction of these draft regulations?



The majority of respondents (95%) supported the introduction of these regulations.

Specific comments

- Responses confirmed that it is helpful to have a conversion process available. One respondent stated that the complexity, time and cost of the current requirements may be acting as a deterrent for many charities wishing to undertake the conversion process.
- Another respondent added that having the option to convert to a CIO at a later point would be reassuring to charities choosing to initially set up in another legal structure.
- Many respondents felt that smaller charities with an income under £250,000 will feel the most benefit, particularly with more relaxed accounting rules, reduced filing requirements and being able to prepare their accounts on a Receipts and Payments basis rather than on an accruals basis.
- Some respondents commented that the introduction of these regulations is long overdue.

Our response

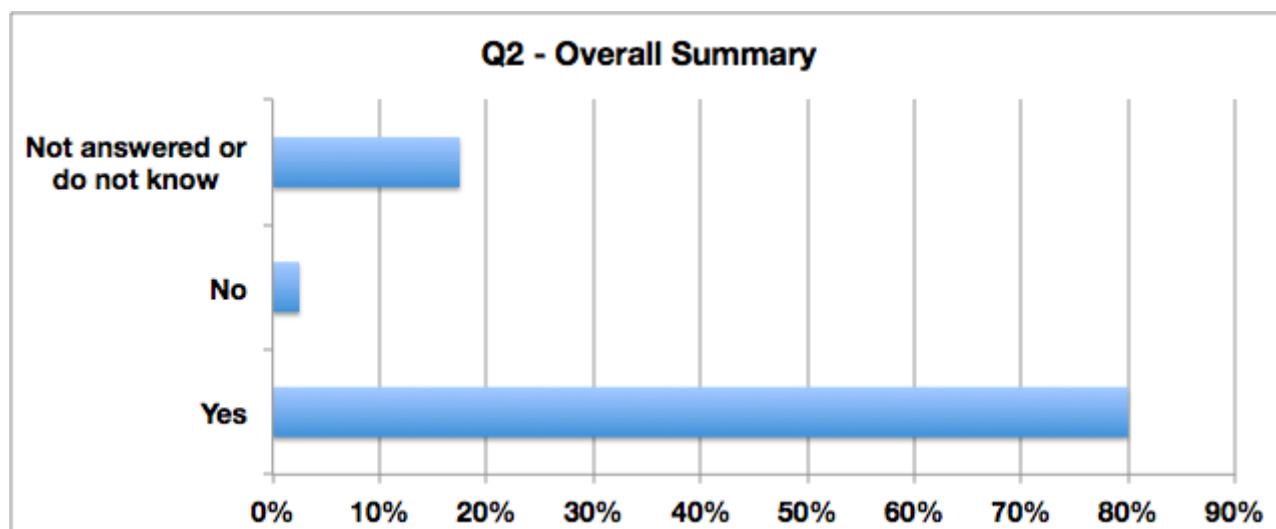
The Department welcomes the overwhelming support from the consultation for the conversion process.

The Department is committed to supporting charities and making them easier to run. We acknowledge it has taken some time to establish a conversion process, due to work on other priorities such as the Charities (Protection and Social Investment) Act 2016. Introducing the new regulations also requires careful consideration to ensure that any new requirement is proportionate and that non-regulatory options have been exhausted.

It has become evident that without a direct conversion process, the costs and complexity of changing legal structure will deter many organisations from considering the CIO structure, even where it may be more appropriate.

Question 2: Demand for the Draft Regulations

**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?**



The majority of respondents (80%) believed that there is demand for the introduction of these regulations. For those that did not answer or did not know, in most cases, this was where the respondent did not feel able to comment on whether there would be demand.

Specific comments

- A number of comments suggested that small and medium sized charities, particularly those incorporated as companies, would be most keen to convert to the CIO structure.
- One respondent commented that Scotland's experience and the popularity of CIO conversions following statutory provision supports a similar expectation of demand in England and Wales.
- One respondent also highlighted that the number of new charities registering as CIOs is now over 50% of the total number of charities registering with the Charity Commission.
- There was a comment that some trustees may not be aware of the CIO structure and option for conversion, and that there should be an appropriate level of publicity to ensure a good level of take up.

Our response

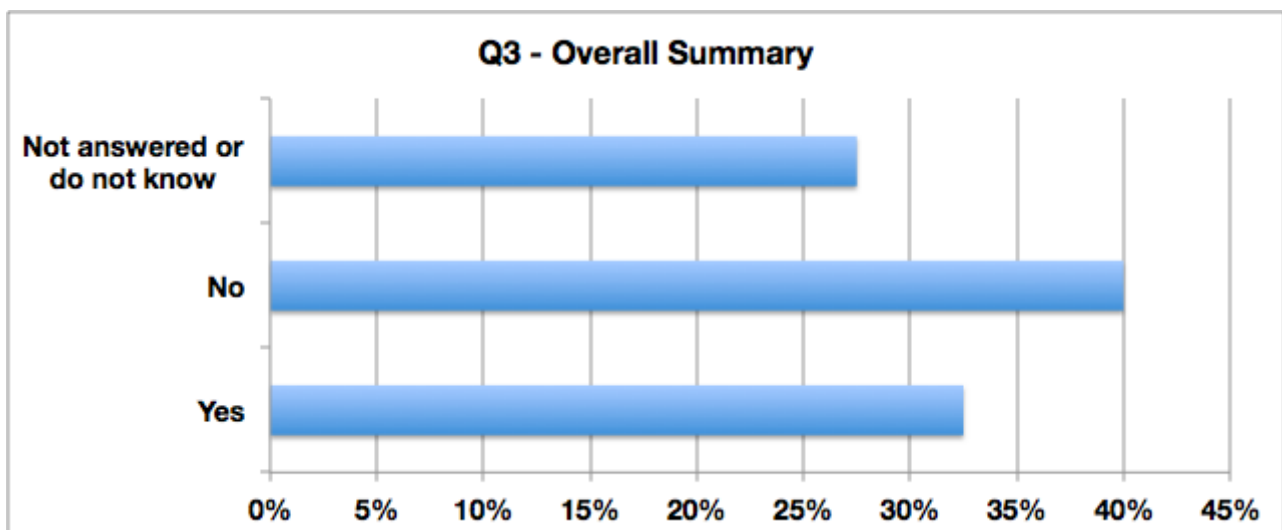
We are confident that the CIO regulations will prove to be popular with charitable companies and CICs looking to change their legal structure. However, we expect that there may be less demand from CICs as the conversion to a CIO is a more significant structural change (requiring registration as a charity).

We agree that small and medium sized charitable companies are likely to be the most interested in converting to a CIO. The proposed phasing in of applications for conversion has been amended to ensure that smaller charities can be among the first to benefit from the new process. This is reviewed in more detail in the response to question 5 on phasing.

We believe there is already a growing level of awareness of the CIO structure. CIOs now account for over 50% of all new charity registrations, and as of 1 August 2016 there are 7,934 charities registered as CIOs.² The Charity Commission will lead on publicising the new CIO conversion process once the regulations are finalised.

Question 3: Proposals for Amending the Draft Regulations

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?



The majority of respondents (67.5%) either did not think there were any measures in the draft regulations that needed to be removed or changed, did not answer the question or

² Source: Charity Commission <https://www.gov.uk/government/organisations/charity-commission>, accessed 01/08/16

did not feel able to provide any comments. However, there were suggestions from 32.5% of respondents.

Specific comments

Filing and Reporting Requirements

- A number of respondents commented that they did not agree with the inclusion of provisions 11(2)(a) and 11(3) concerning circumstances where it would not be appropriate to grant an application to a charitable company, specifically the provision for refusing an application where ‘there have not been filed with the registrar any accounts or reports required to be delivered under the Companies Act 1985 or the 2006 Act in respect of a financial year of the company which has ended by that date’. The particular issue concerns 11(3) which states that this ‘applies whether or not the period for filing the said accounts or reports has expired’.
- Respondents felt that the application should only be refused where a charitable company is in default with its filing and reporting requirements (which is covered in section 11(2)(c)).
- There was concern that this requirement would limit the ‘window’ for applications from the converting company, as accounts would need to be prepared and filed and the application for conversion granted before the commencement of the next financial year. There was a belief that this would potentially delay applications for conversion for a further year.

Circumstances for Refusal of an Application

- There were also comments about the level of discretion the Charity Commission would have in refusing applications, with some respondents suggesting that the scope for refusal was too wide and some respondents putting forward additional proposals for circumstances where conversion should be refused. For instance, one respondent suggested that charitable companies with serious ongoing incidents, which are likely to affect their standing and sustainability e.g. a major failure of safeguarding should be refused permission for conversion.
- Another respondent considered that an application should be refused if the charitable company is under investigation by the Charity Commission, or any other regulator.

Timescales for Applications

- A few respondents commented that there should be a time limit provided for granting or refusing consent for the conversion. One respondent was also unclear what the status of ‘provisional registration’ was.
- One respondent suggested that the Charity Commission should provide indications of the time required for conversion after the application is made (in normal circumstances).

Amendments to the Index of Company Names

- A number of respondents commented that the proposals to include CIOs and SCIOs on the Index of Company Names would be helpful.

Our response

Filing and Reporting Requirements

The Government recognises the concerns of respondents on provisions 11(2)(a) and 11(3). The original intention of these provisions was to ensure continuity of reporting and that the Charity Commission had the most up to date information on a charity's accounts and reports before accepting an application for conversion.

It is recognised that introducing a requirement for accounts and reports to be filed ahead of the statutory deadline may mean an unnecessary burden is placed on charitable companies. This requirement might also lead to bottlenecks in applications for conversion, as many charities share the same financial year reporting deadlines.

This section has therefore been re-drafted in the regulations. There will no longer be a requirement to submit filing ahead of the statutory deadline in order to make a conversion application. Indeed, on conversion the requirement to file accounts is no longer enforceable by Companies House on legal entities which no longer have company status. Instead, the Charity Commission will uphold the existing requirement on converting charitable companies and their trustees to file their accounts and reports to the Charity Commission.

However, for Community Interest Companies the requirements of 7(3)(a) and 7(4) in the regulations will remain. CICs are not regulated by the Charity Commission prior to conversion to a CIO as they are not a charity. Therefore, on conversion from a CIC there would be no enforceable obligation on the newly formed CIO to file accounts and reports for the previous financial year.

There would also be no enforceable obligation to require the newly converted CIO to file accounts and reports with the Charity Commission for the pre-conversion financial year. It would also not be proportionate to apply the full accounting and reporting provisions of the Charities Act 2011 to converting CICs for a previous financial year when they were not at that time a charity.

The intention of maintaining this requirement on a CIC is to ensure consistency of reporting for converting CICs and to ensure the Commission has the necessary information to form a judgement about the application.

Circumstances for Refusal of an Application

A number of the suggestions for circumstances where an application should be refused will be included within the regulations. This will provide an indication of the common situations which are most likely to result in a refusal.

However, this list is not intended to be exhaustive; the Commission will still have the discretion to review other situations and determine whether applications should be approved on a case by case basis.

Charitable companies and now CICs (through the Charitable Incorporated Organisations (Consequential Amendments) Order) will have the power to appeal to the First-tier Tribunal a decision of the Commission to refuse an application for the conversion of a charitable company or CIC into a CIO.

Timescales for Applications

Timescales for the conversion process will not be included in the regulations. However, the Charity Commission will issue guidance on the CIO conversion process once the regulations have been implemented and there is more certainty on the likely timescales.

The use of the term 'provisional status' is used to describe the time period between a charitable company or CIC applying to become a CIO, and the moment at which they become a CIO. As stated in section 232(3) of the Charities Act 2011, the registration of the CIO in the register is provisional only until the appropriate registrar (for instance Companies House or the CIC Regulator) cancels the company as required by section 232(4)(b) of the 2011 Act.

Amendments to the Index of Company Names

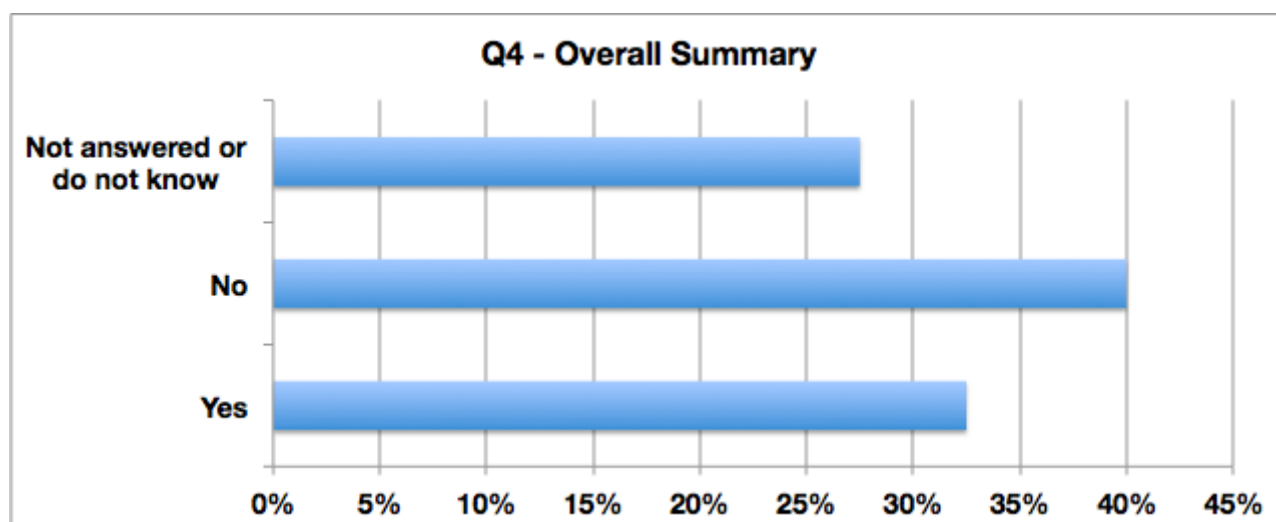
The Government considers there to be significant benefits in adding CIOs and SCIOs to the Index of Company Names. It will mean that newly registering or converting CIOs and SCIOs will have greater protection over their legal identity and brand.

Northern Ireland CIOs cannot be added, as at present, there is no supporting legislation to allow for the registration or conversion of CIOs in Northern Ireland.

Only CIOs and SCIOs are being added to the Index of Company Names and not all charities, as the Index is intended for incorporated bodies and not all charities are incorporated (at the moment around 25% of charities are incorporated and around 75% are unincorporated).

Question 4: Proposals for Missing Measures

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



The majority of respondents (67.5%) either did not think there were any measures missing in the draft regulations, did not answer the question or did not feel able to provide any comments on what might be missing in the draft regulations. 32.5% thought that there were measures missing in the draft regulations.

Specific comments

Community Benefit Societies and Charitable Trusts

- A couple of respondents commented that there are no provisions for Community Benefit Societies (CBSs) to convert to the CIO structure. There was also one suggestion for a process to allow CIOs to become a CBS.
- There was also one enquiry about Charitable Trusts not being in scope to convert to a CIO.
- There was also a suggestion that a process be put in place for CIOs to convert back to charitable companies.

Return of Capital

- One respondent also queried the absence of any provision for the return of capital to shareholders.

Register of Charges

- There were several comments about the absence of any provision in the draft regulations concerning charges registered against a charitable company applying to convert to a CIO. There was concern that where land is used as a security, the existence of a charge is publicly available on the Land Registry, but in other cases,

for instance for floating charges, the Companies House Register is the only other public register for the notification of charges.

- One suggestion was that there should be provision in the regulations to ensure that a charitable company with any material assets pledged in favour of a creditor be required to provide supporting evidence of written consent from each creditor in respect of its application for CIO conversion. In addition, it was suggested that the Charity Commission should be required to check with Companies House to see if the applicant is listed on the register of charges.
- It was also proposed that a declaration should be required as part of the application process that:
 - the company has no register of charges;
 - it has outstanding charges required to be registered at Companies House or;
 - that any outstanding charges have been discharged.

Circumstances for Refusal of an Application

- There were also suggestions for further circumstances where applications could be refused, including where:
 - Companies House or the CIC Regulator is pursuing enforcement or prosecution action against the company which wishes to convert;
 - It is in the public interest to refuse the conversion, for example, if the company which wishes to convert is attempting to avoid enforcement or prosecution action;
 - The company is in the process of dissolution;
 - Any of the directors is disqualified under the Charities Act 2011 from acting as a charity trustee;
 - The company which wishes to convert is in liquidation or administrative receivership

Memorandum of Understanding

- One respondent suggested that a Memorandum of Understanding should be signed between the relevant regulatory bodies.

Clarification on Impacts of the Conversion Process

- A few respondents commented that it was not clear whether a converting charity would retain its existing charity registration number.
- One respondent suggested it would be helpful to have guidance on the position where a legacy is left to a charitable company which has since converted to a CIO.
- A number of respondents had concerns about the impact of conversion on pensions regulations.
- A few respondents were concerned about the position of employees on conversion and any TUPE implications.
- One respondent requested confirmation that the Information Commissioner's Office would be satisfied that data consents obtained by the company/CIC would be valid for the CIO post-conversion.
- There was also concern that contracts would need to be novated.

- One respondent was also concerned that conversion might lead to a conflict of interest, on transferring assets and liabilities when the trustees of the new CIO, or a majority of them, will be the same as the directors of the converting company.

Our response

Community Benefit Societies and Charitable Trusts

Community Benefit Societies are “exempt” charities and as such are prohibited from registration with the Charity Commission. A CIO can only exist when it is registered with the Charity Commission. The Charities Act 2011 makes clear that an organisation that would be an exempt charity cannot make an application to convert into a CIO (section 229(2)(b)).

If charitable community benefit societies were to cease to be exempt, and register with the Charity Commission, then a conversion process from Community Benefit Society to CIO could be explored (under section 229(1) of the Charities Act 2011). However, there is no timetable for amending legislation which would enable this at present. Registration with the Charity Commission would also bring added regulatory burden in other ways.

There is no specific mechanism to allow an existing unincorporated association or trust to convert its legal form to a CIO. Instead, these organisations will need to create a new CIO under the existing provisions in the Charities Act 2011.

The Government cannot provide a conversion process from a CIO to a Charitable Community Benefit Society, as there is no power to create such a process in primary legislation. The Government cannot provide for a conversion process from CIO to company, or CIO to CIC either, for the same reason.

Return of Capital

The Charities Act 2011 already specifies in section 228(2)(a) that application for conversion by a charitable company is not possible where a company has a share capital and if any of the shares are not fully paid up. Conversion of a charitable company with share capital is prevented because CIOs do not have share capital and it would not be possible for a charitable company to transfer its share capital when it converted to a CIO. Similarly, in the draft regulations section 9(2) specifies that upon conversion of a CIC to CIO, all shares are cancelled and no former holder of any cancelled share has any right in respect of it after its cancellation.

Register of Charges

The Government recognises that some charitable companies wishing to convert to a CIO may have unsatisfied charges on the register of charges.

It is the role of a charity’s trustees to determine whether conversion is the most appropriate option for the charity. A charitable company which has granted a floating

charge must consider what effect the conversion to a CIO would have on that charge, and seek appropriate independent advice on the matter as necessary before applying for conversion.

Additionally, companies which have fixed or floating charges registered with the Registrar of Companies (Companies House) that are not yet satisfied should note that it is not possible to register a statement of satisfaction with Companies House following the conversion, even if the charge was satisfied prior to the conversion taking place. This means that the charge will remain listed indefinitely against the converted company's entry in the Register of Companies (although the Register entry will show that the company has converted into a CIO). If this is an issue, then the charitable company should consider how best to resolve the matter before submitting their application for conversion.

Circumstances for Refusal of an Application

As stated in the Government's response to question 3, a number of the suggestions for circumstances where an application should be refused will be included within the regulations to provide an indication of the situations which are most likely to result in a refusal.

Memorandum of Understanding

A formal memorandum of understanding is already in place between the Charity Commission and the CIC Regulator. The Charity Commission meets regularly with Companies House and they have worked together to develop the processes for CIO conversions.

Clarification on Impacts of the Conversion Process

Charity Number

Converting charitable companies will retain their existing charity number. This will ensure that costs are minimised during the conversion process. At present existing charitable companies need to close and re-register as a new charity to become a CIO, with a new charity number leading to stationery changes and other associated costs.

Legacies

Any legacy to a charitable company will be payable to a CIO under the Charities Act 2011. The record of the conversion held by the Commission, and for a specified period, by Companies House, provides that the same entity will continue to exist, but in a different form. The converting entity will also retain the same charity number.

Pensions Regulations

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 introduces two new procedures into the Occupational Pension

Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) (the “Employer Debt Regulations”). The two new procedures set out prescribed circumstances in which an employer need not pay an employer debt. In developing the two new procedures, the Government’s aim is to assist, as far as possible, employers who are restructuring, but to do so without reducing the protection afforded to members.

Very broadly the “general easement” procedure provides for circumstances in which an employer debt is not payable where one employer ceases to participate in the scheme, and another associated employer, also participating in the scheme, agrees to take on all its obligations towards the scheme. The employer ceasing to participate is called the “exiting employer”; the employer who accepts its obligations is called the “receiving employer”.

The general easement is of benefit to charities and voluntary bodies, specifically where a charity set up as a charitable company wishes to become a Charitable Incorporated Organisation. Such a change of status may trigger an employer debt. However, the new procedures provides that a change of legal status will not necessarily trigger an employer debt provided prescribed conditions are met. More guidance is available on the [Pensions Regulator website](#).³ However, any consideration of the impact on pensions is the duty of trustees, and it is advised that independent advice is sought prior to an application for conversion.

TUPE Implications

As there is no change in the legal status of the entity through conversion to a CIO, there will typically be limited TUPE implications. It is the duty of the charity’s trustees or CIC’s governing board to seek independent advice on such matters.

Data consents

As there is no change in the legal status of the entity but a change in structure, there will not be a need for new data consents.

Conflict of interest

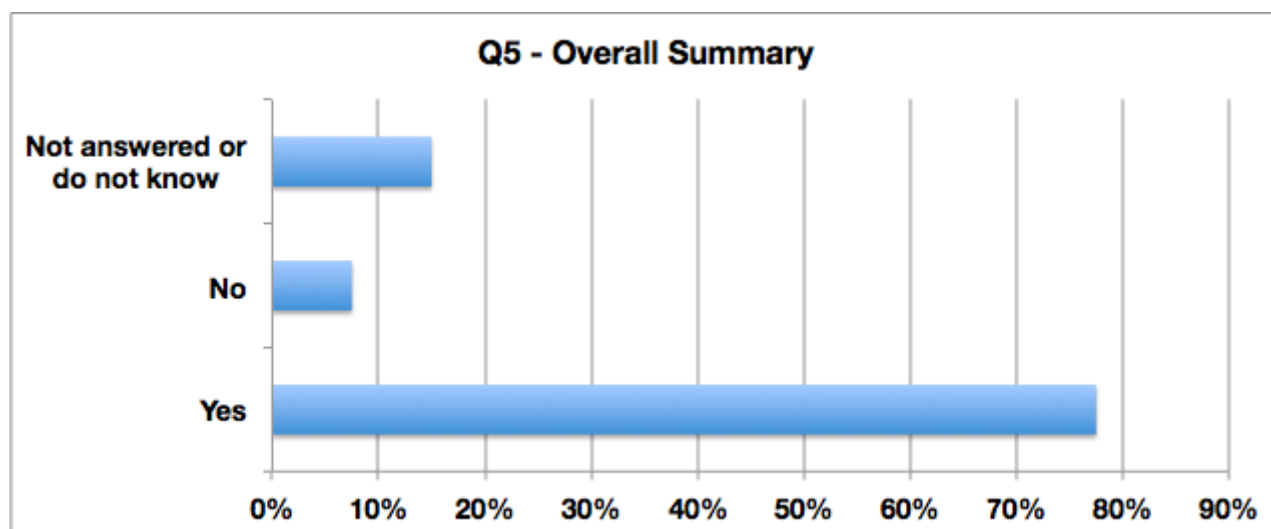
There will be no conflict of interest as there is no change in the legal entity on conversion to a CIO. There is therefore no ‘transfer’ of assets and liabilities.

Question 5: Proposed Phasing of Applications

³ Pensions Regulator:

<http://www.thepensionsregulator.gov.uk/guidance/multi-employer-schemes-and-employer-departures.aspx>

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



The majority of respondents (77.5%) agreed that the measures should be phased in. However, there were a number of comments and alternative suggestions about the proposed ordering of phasing for applications.

Specific comments

- Many respondents agreed with the rationale for phasing in applications, but proposed that smaller charities, rather than larger should be prioritised. It was widely felt that smaller charities are disproportionately affected by the administrative costs associated with dual registration.
- One respondent suggested a ‘first come first served’ approach for phasing, suggesting that this would be a fairer method for determining the order of applications.
- One respondent was also concerned that there was only one phase proposed for all CIC applications to commence.

Our response

The Government understands that the greatest demand for the conversion process may be from smaller charities who wish to reduce their regulatory burden and associated costs as soon as possible.

The Government has discussed phasing with the Charity Commission and both parties have agreed that the phasing for applications should be reversed to address these concerns. However, to ensure that the volume of applications can be sufficiently managed, the ‘banding’ or thresholds for applications will be narrowed. The Commission will adopt a flexible approach and will consider opening up the next ‘banding’ of applications if demand is not as great as anticipated within one application phase.

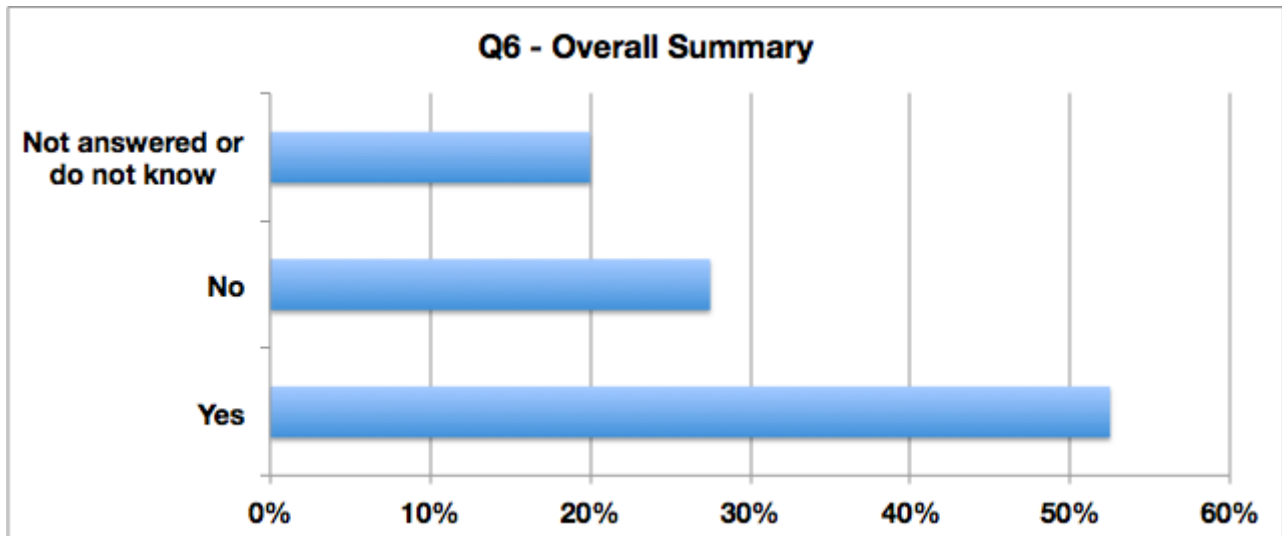
Due to operational constraints at the Charity Commission, phasing will now commence as follows:

- 1 January 2018: Charitable companies with an annual income of less than £12,500;
- 1 March 2018: Charitable companies with an annual income between £12,500 and £25,000;
- 1 May 2018: Charitable companies with an annual income between £25,000 and £100,000;
- 1 June 2018: Charitable companies with an annual income between £100,000 and £250,000;
- 1 July 2018: Charitable companies with an annual income between £250,000 and £500,000;
- 1 August 2018: Charitable companies with an annual income greater than £500,000;
- 1 September 2018: Community Interest Companies.

There will still be one start date for applications for conversions from CICs to CIOs. We anticipate that there will not be as significant a volume of demand from CICs as there will be for charitable companies, as at present CICs are not burdened by dual reporting requirements and only a limited number of CICs have chosen to convert to a charity status. The Charity Commission will also have had one year to work through the conversion process, so it is expected that there will be an efficient process in place to deal with a large volume of applications should this be the case.

Question 6: Further Comments on the Regulations

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



Just over half of respondents (52.5%) had further comments about the regulations or issues to be considered. 47.5% of respondents did not have any comments or did not answer the question.

Specific comments

To note - responses to this question that have already been covered in previous questions have not been repeated.

Charity Commission's Capacity

- Two respondents expressed concern about the capacity of the Charity Commission to handle the increased workload following the introduction of the conversion process.

Land Registry

- In its formal response to the consultation, the Land Registry have suggested that if there are changes to the charity's status during the time when it is registered as proprietor of an estate in land, the title register must be brought up to date to reflect the current position.
- The Land Registry have suggested that the Chief Land Registrar be notified as part of section 8(3) of the Charitable Incorporated Organisations (Conversion) Regulations 2016.

Our response

Charity Commission's Capacity

To ensure that there is capacity to process applications, any additional changes which a converting charity may wish to make (for instance, a change in charity name or charitable

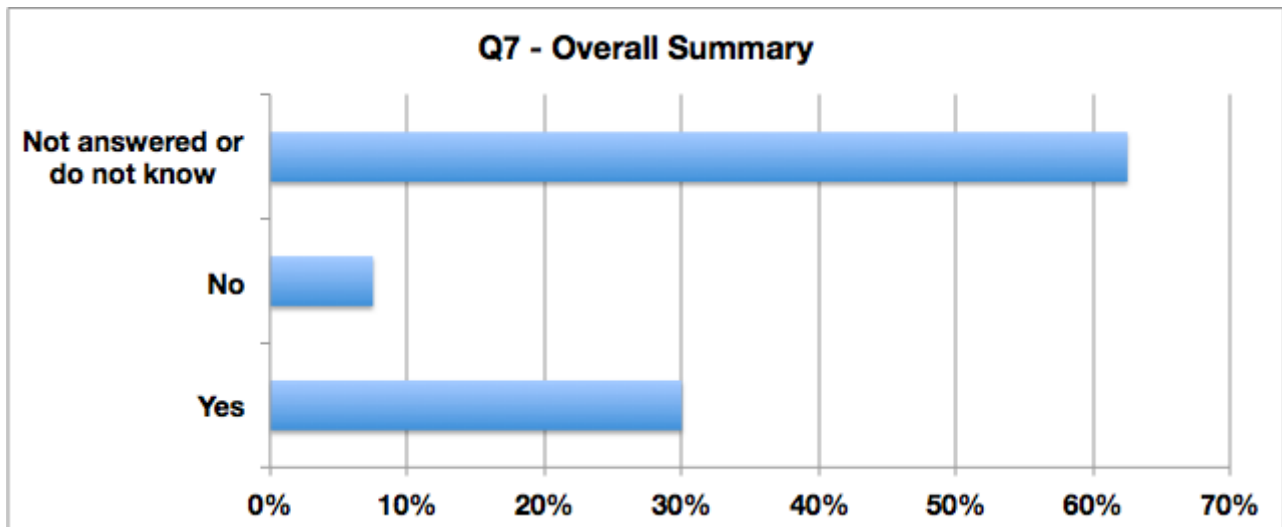
objects) will need to take place before or after the conversion has occurred. CICs will need to apply for charitable status prior to conversion.

Land Registry

The newly converted CIO and its trustees will be under an obligation to apply for the appropriate restriction to be entered in the title register of any land which it was already registered as proprietor, in order to bring the register up to date.

Question 7: Assessment of Impact

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



The majority of respondents (62.5%) did not answer the question or did not feel they were able to offer their views on our assessment of the impact. A small number of respondents did not agree with the impact assessment (7.5%). A third of respondents (30%) did agree with our assessment of impact.

Specific comments

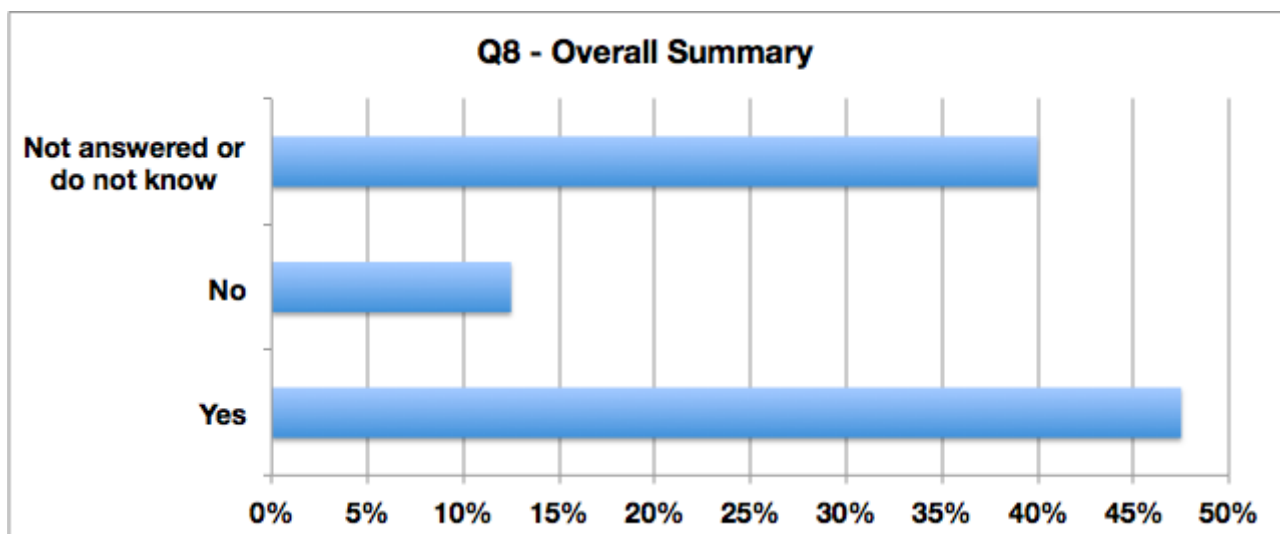
- The majority of respondents who did not feel able to answer this question, suggested that they were not able to provide their views as the full impact assessment was not provided with the consultation document.

Our response

A summary of impact was included as part of the consultation document. A final impact assessment is published alongside the final regulations and this response to the consultation.

Question 8: Comments on Our Assessment

Do you have any comments to make on our assessment?



The majority of respondents (52.5%) did not answer the question or did not feel able to offer any comments on our assessment of impact. 47.5% of respondents provided their views and a number of respondents (12.5%) did not have any further comments.

Specific comments

Benefits of Deregulation

- Several respondents indicated that they would realise on-going savings relating to simpler accounts preparation, simpler reporting requirements, a single annual return and lower costs for registration and filing of information (e.g. annual accounts).
- One respondent commented that the regulations will be welcomed as deregulatory and enabling and allow a smooth transition to the new legal form.
- One respondent thought that the estimate of the number of charities wishing to convert from company status was too high.

Costs

- One respondent indicated that they did not expect there to be any direct costs for their organisation to convert, as their services were entirely volunteer-run.
- However, another respondent suggested that they would face extra costs if they were faced with speeding up the production of their accounts and returns to put forward their application for conversion.
- Some respondents referred to the costs associated with reviewing whether conversion was appropriate and for transitional arrangements such as pensions arrangements. However, in most cases it was recognised that the one-off costs would be less than the overall impact of the on-going savings of CIO status, and less than the existing arrangements to transfer structure into a CIO.
- One respondent commented that the £603 cost estimate for CIO conversion would be an overestimate for smaller charities and an underestimate for larger charities.
- However, another respondent thought our estimate too conservative, suggesting that, if the alternative process of “winding up the existing company and transferring all assets, liabilities, staff, funding agreements etc. to a new CIO” is considered the savings are significant. They go on to estimate a cost of £2,000 for a typical charity and suggest that in complex cases the cost could rise to well over £30,000.

On-going Cost Savings

- There was a mix of views among respondents about the size of on-going cost savings. Some thought that the annual cost saving would be less than estimated, with one respondent suggesting that savings were less likely for “the larger charitable company with substantial assets, staffing and activities, where the costs of company law compliance are normally only marginal in comparison with the costs of charity law compliance”.
- However, there were a number of respondents who shared the view that smaller charities would benefit more from the conversion process.
- There was also a suggestion that CICs would financially benefit from access to charitable status, and the associated tax reliefs and access to funding that charitable status brings.

Our response

Benefits of Deregulation

The Charity Commission has anticipated that between 6,700 and 11,700 (20%-35% of existing charities) will convert to the CIO form as a result of this regulatory change over ten years. This is based on Charity Commission estimates, using survey data and data on new CIO registrations. In the charities survey for the Charities Act Review, which took place before the introduction of the CIO structure, 25% of respondent charities said that they either would, or would consider, establishing as a CIO once the model becomes available

Costs

The costs of conversion will only fall on those charities and CICs that do decide to convert to a CIO form. Converting to a CIO will involve some administrative costs. It is conservatively estimated that, at most, these costs will be similar to the costs of establishing a new CIO. This was estimated previously by the Charity Commission to stand at £573 per organisation (2012 prices), or £602 expressed in 2016 prices. This includes trustee time and an element of legal advice.

We accept that these figures are an average which may mask variability depending, for example, on charity size – a small charity conversion may require no legal advice, and using the model CIO constitution would not require significant trustee time. However, a large incorporated charity with staff, property, and liabilities such as pension schemes, may require significantly more professional advice to convert to a CIO, so it is important that the average costs reflect both ends of the cost spectrum.

On-going Cost Savings

All charities transferring to the CIO form will benefit from reduced requirements for the preparation and scrutiny of their accounts. Instead of registering with and submitting accounts to both Companies House and the Charity Commission, the newly converted Charitable Incorporated Organisations will only register with the Charity Commission.

We recognise that the size of this cost saving will vary depending on a range of factors including the size of the charity and complexity of their current reporting arrangements. In line with the previous impact assessment regarding the introduction of the CIO structure, it is expected that the average annual costs of both preparation and scrutiny of CIO accounts will be the same as for unincorporated charities, at an average of £421 per annum (2012 prices). This represents a saving of £886 (2012 prices), compared to the average costs of preparation, scrutiny, and submission for charities with a company structure (estimated at £1,307). In 2016 prices, the saving per charity per annum is £931.

The Government recognises that ongoing benefits are expected to accrue to CICs from simplifying the conversion process. As CICs convert to a CIO structure they will gain charitable status and therefore be able to benefit from a number of charitable tax reliefs and access to funds from charitable grant-makers. For instance, they will be able to claim stamp duty on shares, receive an 80% discounted rate of business rates, and benefit from indirect tax reliefs, for instance, on gift aid. However, the majority of such benefits are transfers (i.e. are offset by an Exchequer cost) and have therefore not been monetised in our impact assessment. Furthermore, it would not be proportional or prudent to try and estimate the number of CICs newly converting solely because of the lower cost of conversion.

Conclusion

The Department for Digital, Culture, Media and Sport is grateful to all the individuals and organisations that took the time to provide responses to the consultation. These have contributed to producing regulations which are fit for purpose and to help to create a more effective process for charitable companies and CICs wishing to convert to CIOs.

We are pleased that many respondents welcomed the proposed regulations and recognised the benefits of facilitating conversion to the CIO structure.

An Impact Assessment accompanies this report and the final regulations.