



# 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 the Co-operative and Community Benefit Societies and Credit Unions Act 1965.
- (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 section 52(3) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965.

### **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 Financial Services Authority.
- (3) In this section and sections 231 to 233, “application for conversion” means an application under section 228 or 229.

### **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),
  - (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.

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### **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.

### **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.

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- (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.