STATUTORY INSTRUMENTS

2017 No. 1232

CHARITIES, ENGLAND AND WALES

The Charitable Incorporated Organisations (Conversion) Regulations 2017

Made - - - -	*7th December 2017*
Laid before Parliament	*8th December 2017*
Coming into force - -	*1st January 2018*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 231(3), 234, 246 and 347(3) of the Charities Act 2011(**1**).

In accordance with section 348(4)(b) of that Act the Secretary of State has consulted such persons and bodies of persons as the Secretary of State considers appropriate.

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Charitable Incorporated Organisations (Conversion) Regulations 2017 and come into force on 1st January 2018.

(2) In these Regulations—

"the 2004 Act" means the Companies (Audit, Investigations and Community Enterprise) Act 2004(**2**);

"the 2006 Act" means the Companies Act 2006(**3**);

"the 2011 Act" means the Charities Act 2011;

"application for CIC conversion" means an application by a CIC to be converted into a CIO under regulation 4;

"CIC" means a community interest company;

(**1**) 2011 c. 25. Regulations under Part 11 of this Act (charitable incorporated organisations) are to be made by the Minister (section 247) as defined in section 353. By virtue of article 10(1) and (2)(g) of S.I. 2016/997, that function is now exercisable by the Secretary of State.

(**2**) 2004 c. 27.

(**3**) 2006 c. 46.

"conversion CIO" means a CIO(**4**) which is registered on the conversion of a company (including a CIC) into a CIO;

"provision for entrenchment" has the meaning given by regulation 15 of the Charitable Incorporated Organisations (General) Regulations 2012(**5**);

"registrar" means the registrar of companies within the meaning of section 1060(3) of the 2006 Act;

"the Regulator" means the Regulator of Community Interest Companies appointed under section 27 of the 2004 Act.

Applications for conversion: communications with Commission

2. Regulation 7 of the Charitable Incorporated Organisations (General) Regulations 2012 (applications for registration: communications with Commission) applies in relation to any requirement in these Regulations for applicants for conversion to send documents or information to the Commission.

PART 2

CONVERSION OF CIC INTO CIO

Disapplication of the 2004 Act

3. Sections 53 to 55A of the 2004 Act (company ceasing to be a CIC and becoming a charity)(**6**) do not apply in relation to a CIC which has ceased to be a CIC by converting into a CIO.

Application for conversion by CIC

4.—(1) Subject to paragraph (2), a CIC may apply to the Commission to be converted into a CIO, and for the CIO's registration as a charity, in accordance with this regulation.

(2) Such an application may not be made by a CIC—

(a) having a share capital if any of the shares are not fully paid up; or

(b) where the resulting charity would be an exempt charity.

(3) The CIC must supply the Commission with—

(a) a copy of the conversion resolution;

(b) a copy of the proposed constitution of the CIO;

(c) if the proposed constitution of the CIO includes provision for entrenchment, a statement specifying that fact;

(d) a copy of a resolution of the CIC adopting the proposed constitution of the CIO;

(e) such other documents or information as the Commission may require for the purposes of the application.

(4) A conversion resolution must be—

(a) a special resolution of the CIC; or

(**4**) A CIO is a charitable incorporated organisation, which is a legal form for charities created under the Charities Act 2006 (now consolidated in the Charities Act 2011).
(**5**) S.I. 2012/3012.
(**6**) Section 53 was amended by the Co-operative and Community Benefit Societies Act 2014 (c. 14), section 151(1) and Schedule 4, paragraphs 87 and 89; also amended by S.I. 2008/948; and S.I. 2009/1941. Sections 54, 54A, 54B, 54C, 55 and 55A were substituted by S.I. 2009/1941.

(b) a unanimous written resolution signed by or on behalf of all the members of the CIC who would be entitled to vote on a special resolution.

(5) Chapter 3 of Part 3 of the 2006 Act (resolutions and agreements affecting a company's constitution) does not apply to a conversion resolution.

(6) In the case of an application for CIC conversion by a CIC which is a company limited by guarantee (whether or not it also has a share capital), the proposed constitution of the CIO must (unless paragraph (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) The amount referred to in paragraph (6)(a) must not be less than the amount up to which the CIC's members were liable to contribute to the assets of the CIC if it were wound up.

(8) Where the amount each member of the CIC 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 CIC into a CIO; and

(b) the requirements of paragraphs (6) and (7) do not apply.

Commission to consult registrar and others

5.—(1) The Commission must notify the following of an application for CIC conversion—

(a) the Regulator;

(b) the registrar; and

(c) such other persons (if any) as the Commission thinks appropriate in the particular case.

(2) The Commission—

(a) may consult the Regulator; and

(b) must consult the registrar and those persons (if any) notified under paragraph (1)(c),

about whether the application should be granted.

Regulator to decide eligibility to cease being a CIC

6.—(1) Where the Regulator is notified by the Commission of an application for CIC conversion, the Regulator must decide whether the CIC is eligible to cease being a CIC.

(2) For the purposes of paragraph (1) a CIC is eligible to cease being a CIC if none of the criteria in section 55(2) of the 2004 Act (company's eligibility to cease being a CIC and become a charity) applies.

(3) Section 55A(4) of the 2004 Act (right to appeal to Appeal Officer) applies to the Regulator's decision on eligibility under this regulation as it applies to the Regulator's decision on eligibility in relation to an application under that Act for a CIC to become a charitable company.

(4) The Regulator must notify the Commission of its decision.

Application not to be granted before eligibility decided

7. The Commission must not grant an application for CIC conversion before—

(a) it has been notified of the Regulator's decision under regulation 6(4); and

(b) if an appeal against the Regulator's decision is made, it is notified that the appeal has been finally determined or withdrawn.

Cases where application must or may be refused

8.—(1) The Commission must refuse an application for CIC 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 of the 2011 Act (constitution of CIOs) and any regulations made under that section;

(c) in the case of a CIC which is a company limited by guarantee, the CIO's proposed constitution does not comply with the requirements of paragraphs (6) and (7) of regulation 4;

(d) the Regulator has decided in accordance with regulation 6 that the CIC is not eligible to cease being a CIC.

(2) The Commission may refuse an application for CIC 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) of the 2011 Act (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 regulation 5(2), and having regard to paragraph (3), the Commission considers that it would not be appropriate to grant the application.

(3) For the purposes of paragraph (2)(c) it would not be appropriate to grant the application in circumstances where—

(a) at the date the application was made, there have not been filed with the registrar any accounts or reports required to be delivered under the 2006 Act in respect of a financial year of the CIC which has ended by that date;

(b) at the date the application was made the CIC, or any of its directors, are subject to an undischarged requirement to send any document or information to the registrar or the Commission;

(c) the Regulator or the registrar has instituted civil or criminal proceedings in respect of the CIC which have not been concluded;

(d) the CIC is in the process of being dissolved;

(e) the CIC is in liquidation or administrative receivership; or

(f) any director of the CIC is disqualified from being a charity trustee or trustee for a charity under section 178 of the 2011 Act(**7**).

(4) If the Commission refuses an application for CIC conversion, it must so notify—

(a) the Regulator; and

(b) the registrar.

(**7**) Section 178 has been amended by S.I. 2012/2404, S.I. 2016/481 and section 9 of the Charities (Protection and Social Investment) Act 2016 (c. 4); there are further outstanding amendments to section 178 to be made, from a date to be appointed, by section 9 of that Act.