

## Chapter 4: Creating a CIC - Contents

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## 4.1. Incorporating a new community interest company

Setting up a company brings many obligations (see [Chapter 8](#)). Before proceeding you are recommended to take professional legal, or accountancy, advice on whether a limited company, in the form of a Community Interest Company (“CIC”), is the best way to run your enterprise.

The Companies House booklet GP1 “[Incorporation and Names](#)” provides information on how to form a new company. The basic procedure is the same for a CIC as for any other company except that applicants are required to submit an additional document either the Form CIC36 or CIC37.

### 4.1.1. The documents you need to deliver to form a new CIC

To form a new CIC you need to deliver the following documents (which are considered in detail in this chapter and [Chapter 5](#)) to the appropriate Registrar of Companies for England and Wales, Scotland, or Northern Ireland:

- ❖ [Memorandum of Association](#)
- ❖ [A printed copy of the Articles of Association](#) that comply with the requirements imposed by section 18 of the Companies Act 2006 Act and part 3 of the Community Interest Company Regulations 2005 (CIC Regulations 2005), or which are otherwise appropriate in connection with being a community interest company (see [Chapter 5](#)). Please note that a CIC cannot rely on the default Articles under section 20 of the Companies Act 2006. Model Articles for CICs with explanatory notes can be found at <http://www.cicregulator.gov.uk/memArt.shtml>.
- ❖ [Form IN01](#). Requires details of the CICs proposed name; whether limited by shares or guarantee public or private; the first directors (and secretary if applicable), the intended situation of registered office; a statement of compliance etc.
- ❖ [Form CIC36](#). Requires the CICs community interest statement. The purpose of the community interest statement is to confirm that the CIC will provide benefit to the community. It does this by describing its intended activities who they will help and how. The link will take you to a copy of the form and an example of a completed form.
- ❖ A cheque for £35 made payable to “Companies House”

The community interest statement is an important element in the CIC Regulator’s consideration of the company’s eligibility for CIC status. This Chapter should be read in conjunction with [Chapter 5](#) particularly with regard to what is considered as best practice with regard to setting out the objects and proposed activities of the company. Once delivered and

registered the community interest statement cannot be changed unless the company changes its objects, in which case it would need to deliver to the Registrar of Companies a new community interest statement, together with other documents (see [Chapter 5](#)).

The form CIC36 contains explanatory notes, which you should read carefully before completing the form. Each person who will be a first director of the company must sign this form. The form contains the following:

- A declaration that the company will not be: a political party; a political campaigning organisation; or a subsidiary of a political party or political campaigning organisation (see [Chapter 2](#)).
- A declaration that the company will pursue activities for the benefit of the community, or section of the community.
- A description of the community or section of the community that the company's activities will benefit.
- A description of the company's activities.
- A description of how the activities benefit or will benefit the community.
- A description of how any surpluses will be used.

In many ways the CIC36, which contains the community interest statements can be seen as the company's mission statement and therefore the careful drafting of the community interest statement will help to focus the directors on the purpose of the company.

The form IN01 is a standard form used in the formation of any company and has no particular CIC aspects. They are explained in the Companies House booklet "Incorporation and Names GP1" and in the notes on the form. Further information regarding this form should be obtained from Companies House.

Forms and the model Memorandum and Articles of Association are included in the Annexes of these guidance notes and can be obtained from the Forms page of our website free of charge. The form IN01 can be obtained free of charge from Companies House. They can also be obtained from a law stationers and company formation agents.

#### **4.1.2 Premium same day registration service unavailability**

The Registrar of Companies cannot incorporate a company as a CIC until the CIC Regulator decides that it is eligible to be a CIC and notifies the Registrar of this decision.

The premium same day registration service, therefore, is not available for a CIC. However, every effort will be made to keep the registration time to a minimum, subject to the CIC Regulator being satisfied as to the company's eligibility to be a CIC.

#### **4.1.3. The effect of incorporation**

The Registrar will issue a certificate of incorporation stating that the company is a CIC. The proposed company by virtue of the issue of the certificate becomes a community interest company (see CAICE Act).

#### **4.1.4. Statutory documents placed on the public record**

The forms CIC36, IN01 and the Memorandum and Articles of Association will be placed on the public record by the Registrar and open to public inspection, if the application is successful.

If you wish to provide the CIC Regulator with additional material in support of your application you may do so in a separate letter (See footnote 1 on form CIC36); any such letter will not be placed on the public record. It must be emphasised that this is an additional opportunity to provide the CIC Regulator with further information and not a substitute for fully completing the CIC36.

## 4.2. Converting an existing non-charitable company to a CIC

### 4.2.1. The documents you need to deliver to convert to a CIC

To convert an existing company to a CIC you need to deliver the following documents (which are considered in detail in this chapter and [Chapter 5](#)) to the Registrar of Companies for England and Wales, or Scotland, or Northern Ireland:

- ❖ A copy of the special resolutions:
  - That the company should become a community interest company.
  - To alter the company's Articles to state that it is to be a CIC.
  - To alter the Articles of Association so that they conform to the requirements of the CAICE Act .
  - To change the name of the company to one of the CIC designations. There is no need to invent a new name unless you want to; a simple change from "Ltd" to "c.i.c." will be enough. For more information see [Chapter 2.8](#) and Companies House Guidance\_GP1 "Incorporation and Names".
  
- ❖ [Form NM01 - Notice of change of name by resolution](#)
  
- ❖ A printed [copy of the Articles of Association of the company](#) as altered by the special resolutions.
  
- ❖ [Form CIC37](#). This contains the community interest statement. The purpose of the community interest statement is to confirm that the company will provide benefit to the community. It does this by describing its intended activities who they will help and how. The link will take you to a copy of the form and an example of a completed form.
  
- ❖ A [fee for £25 payable to 'Companies House'](#)

The community interest statement is an important element in the CIC Regulator's consideration of the company's eligibility for CIC status. This Chapter should be read in conjunction with [Chapter 5](#). Particularly with regard to what is considered as best practice with regard to setting out the objects and proposed activities of the company. Once delivered and registered the community interest statement cannot be changed unless the company changes its objects, in which case it would need to deliver to the Registrar of Companies a new community interest statement, together with other documents.

The form CIC37 also contains explanatory notes which you should read carefully before completing the form; and the form must be signed by each director of the company. The form contains the following:

- A declaration that the company will not be: a political party; a political campaigning

organisation; or a subsidiary of a political party or political campaigning organisation (see [Chapter 2](#)).

- A declaration that the company will pursue activities for the benefit of the community, or section of the community.
- A declaration (the charity declarations) either that the company is not a charity or if the company is a charity that the Charity Commission has consented to the change of name of the company

As a CIC cannot be a charity, the charity declarations are required so that the CIC Regulator can be satisfied that the company is not a charity, or if it is a charity that the proper steps have been taken to ensure that the Charity Commission, or the Scottish Charity Regulator, have consented to the conversion. The company will cease to be a charity on becoming a CIC.

- A description of the community or section of the community that the company's activities will benefit.
- A description of the companies activities.
- A description of how the activities benefit or will benefit the community.
- A description of how any surpluses will be used.

In many ways the CIC37, which contains the community interest statement can be seen as the company's mission statement and careful drafting will have wider benefits than assisting the CIC Regulator in the CIC Regulator's consideration of whether a company is eligible for CIC status.

The form CIC37, model Articles of Association and resolutions are included in Annexes A, B & C of this guidance. They can be obtained from our [website](#) free of charge.

The Company House Guidance GP3 "Life of a company - Part 2 Event Driven Requirements GP3" explains the requirements for passing resolutions. Detailed procedures for holding meetings of members and passing resolutions will be included in the existing Articles of the company. Briefly, to pass a special resolution 21 days notice must be given to the members and a majority of 75% of members voting at the meeting is required.

The resolutions must be printed, or be in some other form approved by the Registrar of Companies, and must be delivered to the appropriate Registrar (in Cardiff, Edinburgh or Northern Ireland) together with a reprinted Articles of Association, which incorporate the changes made by the resolutions

You may also want to refer to the Companies (Audit, Investigations and Community Enterprise) Act 2004 ("[CAICE Act](#)") [section 37](#) and the [CIC Regulations 2005 parts 3 & 4](#).

#### 4.2.2. Members dissenting to the passing of the resolutions

It is possible (even if the necessary special resolutions are passed) that some dissenting members may be sufficiently aggrieved at the decision to convert to a CIC that they will take legal action. This could, for example, be on the grounds that they have been unfairly prejudiced as a result of the reduction in their rights to dividends or other distributions resulting from conversion to CIC status.

Depending on the view taken by the Court, such action could undermine the conversion project. It may therefore be useful to informally canvas members' views on the conversion, or take legal advice, before incurring the expense of the formal process (see Companies Act 2006 Part 30).

The possibility of legal action being taken by minority shareholders or members also has some specific consequences for the timing of the conversion process, which are relevant in all cases.

Unless a company's Articles of Association specifically restrict the objects of the company its objects are unrestricted (section 31 of the Companies Act 2006). The statement of the company's objects means the purposes for which it has been formed. In some cases these are very detailed; in other cases, they are drafted in very general terms (e.g. "to operate as a general commercial company").

CICs are not required to adopt any particular provisions in the objects clauses of their Articles, but when converting an existing company to a CIC, you may wish to change its objects in some way, particularly if the company has not previously operated as a social enterprise.

In order to protect the interests of minority shareholders (in the case of a company limited by shares) or members (in the case of a company limited by guarantee), where special resolutions have been passed or made with a view to the company becoming a community interest company, members have the right to apply to the Court within 28 days after the date on which the resolutions are passed or made for the special resolutions to be cancelled. If such an application is made to the Court, the special resolution(s) do not take effect except in so far as the Court confirms it (See section 37A of the CAICE Act)..

The time for filing the resolutions etc therefore varies as follows:

- ❖ Where no application has been made to the court for the cancellation of the special resolution(s) because there was not the required number of dissenting members (see section 37A(1) of the CAICE Act, within 15 days after the passing or making of the resolutions.
- ❖ Where no application has been made to the court for the cancellation of the special resolution(s) the end of the period for making such applications i.e. not earlier than 29 days or later than 44 days of passing the resolutions.

- ❖ Where an application is made to the Court, not later than 15 days after the date on which the Court determines the application or such later date as the Court may order.

All the resolutions and other documents must be submitted to the Registrar at the same time together with the appropriate fees (see the CIC Regulations 2005 part 4).

#### **4.2.3 Premium same day registration service unavailability**

The Registrar of Companies cannot incorporate a company as a CIC until the CIC Regulator decides that it is eligible to be a CIC and has notified the Registrar of this decision.

The premium same day registration service, therefore, is not available for a CIC. However, every effort will be made to keep the registration time to a minimum, subject to the CIC Regulator being satisfied as to the company's eligibility to be a CIC.

#### **4.2.4. The effect of incorporation**

The Registrar will issue a certificate of incorporation stating that the company is a CIC. The proposed company by virtue of the issue of the certificate becomes a community interest company (see CAICE Act 2004 Section 38A).

All copies of the Articles of Association issued by the company after the resolutions take effect must be in the revised form submitted to the Registrar on conversion.

Converting a company to a CIC brings new constraints and obligations. Before proceeding you are recommended to take professional legal, or accountancy, advice on whether a limited company, in the form of a CIC, is the best way to run your enterprise. Also, please read [Chapter 6](#) regarding the asset lock and [Chapter 8](#) regarding continuing obligations.

#### **4.2.5 Accounting reference dates**

It should be noted that the issue of a new certificate of incorporation does not have any effect on the made-up date for the company's annual return or the company's accounting reference date. As the company's CIC Report is filed with the annual accounts a CIC Report is required for the accounting period in which the conversion is made. If you are considering converting late in an accounting period you may wish to defer conversion rather than to have to prepare a CIC Report covering a very short period (see [Chapter 8](#) of this guidance).

#### **4.2.6. Statutory documents placed on the public record**

The form IN01, form CIC37, special resolutions and the Articles of Association will be placed on the public record by the Registrar and open to public inspection, if the application is successful.

If you wish to provide the CIC Regulator with additional material in support of your application you may do so in a separate letter (see footnote 1 on form CIC37). Any such letter will not be placed on the public record. It must be emphasised that this is an additional opportunity to

provide the CIC Regulator with further information and not a substitute for fully completing the CIC37.

## **4.3. Converting a charity to community interest company**

### **4.3.1. Charitable companies in England, Wales and Scotland**

This chapter only applies to charitable companies registered in England, Wales and Scotland.

A “Northern Ireland charity” cannot convert to a CIC. A Northern Ireland charity for these purposes is a company, which is a Northern Ireland charity. A Northern Ireland charity is a body that has applied to the Inland Revenue and been granted charitable status for tax purposes.

### **4.3.2 Unincorporated charities**

A CIC must be a limited company. Therefore an unincorporated charity (including charitable trusts) cannot convert to a CIC.

It should be noted that the CIC could be appointed a charity trustee of the trust assets, the charity tax exemptions would not then be lost. The CIC, despite its own non-charitable status would be legally bound to execute the charitable trust in the same way as would any other charity trustee. However, a charity could not transfer its assets so that they became part of the corporate property of a CIC. That would be a non-charitable application, as the property would become capable of diversion to non-charitable objects (through an alteration of the CIC's objects) and the charity regulatory framework would be disapplied. This would involve a breach of trust, and could also have adverse tax consequences. However charities can make payments to non charitable organisations provided that the money is used for a charitable purpose, and the trustees remain responsible for ensuring that it is used for those purposes.

If the unincorporated charity or trust's assets were depleted to a point where there were no assets remaining it could be wound-up. The option to wind-up would not apply to an unincorporated charity, or trust, that held a permanent endowment i.e. an asset; including land and investments, which must, under a legal document, be held permanently by the unincorporated charity.

### **4.3.3. Charitable companies converting to a CIC in England, Wales and Scotland**

Under the CAICE Act,, charitable companies in England, Wales and Scotland can convert into a CIC. Charities cannot be a CIC and a charity simultaneously (though a charity could set up a CIC as a subsidiary company).

To convert an existing charitable company to a CIC you need to deliver the following documents to the Registrar of Companies for England and Wales, or Scotland (see CAICE Act s.38:

- ❖ A copy of the special resolutions:
  - That the company should become a community interest company.
  - To alter the company’s Memorandum to state that it is to be a CIC.
  - To alter the Articles of Association so that they conform to the requirements of the CAICE Act.
  - To change the name of the company to one of the CIC designations. There is no need to invent a new name unless you want to; a simple change from “Ltd” to “c.i.c.” will be enough. For more information see Chapter 2.8 and Companies House Guidance GP1“Incorporation and Names.
  
- ❖ Form NM01 - Notice of change of name by resolution
  
- ❖ A printed copy of the Articles of the company, as altered by the special resolutions. This link will take you to model Articles for different types of CICs and model Articles with explanatory notes.
  
- ❖ A form CIC37. This contains the community interest statement. The purpose of the community interest statement is to confirm that the company will provide benefit to the community. It does this by describing its intended activities who they will help and how. for different types of CICs and model Articles with explanatory notes. The link will take you to a copy of the form and an example of a completed form.
  
- ❖ Prior written consent of:
  - the Charity Commission, or
  - the Scottish Charity Regulator.
  
- ❖ A fee for £25 payable to ‘Companies House’

At the time the resolutions are passed the company will still be a charity. The resolutions changing the Articles of Association may, therefore, require prior written consent of the Charity Commission under section 64 of the Charities Act 1993. This will depend on the nature of the constitutional changes being made and is a matter upon which you will need to take professional advice, or consult the Charity Commission.

A charitable company in England, Wales or Scotland may not become a CIC without the prior written consent of the Charity Commission or Scottish Charity Regulator, as appropriate CAICE Act s.39.

#### **4.3.4. The pre-existing corporate property of the charitable company**

On conversion, the existing corporate property of the company, other than its corporate capital, becomes impressed with a trust for charitable purposes in the same way as when a charitable company ceases, by some other form of constitutional change, to be a charity.

The company will, in relation to its corporate property acquired whilst it was a charity, become a trustee for the charitable purposes contemplated by the objects of the company immediately before conversion.

#### **4.3.5. The Form CIC37 – community interest statement**

The form CIC37 contains the community interest statement. The purpose of the community interest statement is to confirm that the company will provide benefit to the community. It does this by describing its intended activities who they will help and how.

The community interest statement is an important element in the CIC Regulator's consideration of the company's eligibility for CIC status. This Chapter should be read in conjunction with Chapter 5.1. Particularly with regard to what is considered as best practice with regard to setting out the objects and proposed activities of the company. Once delivered and registered the community interest statement cannot be changed unless the company changes its objects, in which case it would need to deliver to the Registrar of Companies a new community interest statement and other documents (See Chapter 5.3).

The form CIC37 also contains explanatory notes which you should read carefully before completing the form; and the form must be signed by each director of the company. The form contains the following:

- A declaration that the company will not be: a political party; a political campaigning organisation; or a subsidiary of a political party or political campaigning organisation (see Chapter 2).
- A declaration that the company will pursue activities for the benefit of the community, or section of the community.
- A declaration (the charity declarations) either that the company is not a charity or if the company is a charity that the Charity Commission has consented to the change of name of the company.

As a CIC cannot be a charity, the charity declarations are required so that the Regulator can be satisfied that the company is not a charity, or if it is a charity that the proper steps have been taken to ensure that the Charity Commission, or the Scottish Charity Regulator, have consented to the conversion. The company will cease to be a charity on becoming a CIC.

- A description of the community or section of the community that the company's activities will benefit.
- A description of the companies activities.
- A description of how the activities benefit or will benefit the community.
- A description of how any surpluses will be used.

You may wish to click on the following link to view the [application form and an example of a completed form CIC37](#).

In many ways the CIC37, which contains the community interest statement can be seen as the company's mission statement and careful drafting will have wider benefits than assisting the Regulator in her consideration of whether a company is eligible for CIC status.

#### **4.3.6. Where to obtain forms and guidance**

The form CIC37, model Articles of Association and resolutions are included in Annexes A, B & C of this guidance. They can also be obtained on our [website](#) free of charge.

The [Company House Guidance](#) "Life of a Company – Part 2 Event Driven Requirements GP3" explains the requirements for passing resolutions. Detailed procedures for holding meetings of members and passing resolutions will be included in the existing Articles of the company. Briefly, to pass a special resolution 21 days notice must be given to the members and a majority of 75% of members voting at the meeting is required.

The resolutions must be printed or be in some other form approved by the Registrar and must be delivered to the appropriate Registrar (in Cardiff or Edinburgh) together with a reprinted Articles of Association, which incorporate the changes made by the resolutions

You may also want to refer to the [CAICE Act section 37](#) and the [CIC Regulations 2005 parts 3 & 4](#).

I must emphasise that the example(s) are provided for assistance and guidance only.

#### **4.3.7. Timing for filing the resolutions**

The time for filing the resolutions etc as follows:

- ❖ Where no application has been made to the court for the cancellation of the special resolution(s) because there was not the required number of dissenting members (see section 37A(1) of the CAICE Act), within 15 days after the passing or making of the resolutions.
- ❖ Where no application has been made to the court for the cancellation of the special resolution(s) the end of the period for making such applications i.e. not earlier than 29 days or later than 43 days of passing the resolutions.
- ❖ where an application is made to the Court, not later than 15 days after the date on which the Court determines the application or such later date as the Court may order.

All the resolutions and other documents must be submitted to the Registrar at the same time together with the appropriate fees (See [Chapter 4.9](#), and the [CAICE Act](#) part 4).

#### **4.3.8. Premium same day registration service unavailability**

The Registrar of Companies cannot incorporate a company as a CIC until the CIC Regulator decides that it is eligible to be a CIC and has notified the Registrar of this decision.

The premium same day registration service, therefore, is not available for a charitable company converting to a CIC. However, every effort will be made to keep the registration time to a minimum, subject to the CIC Regulator being satisfied as to the company's eligibility to be a CIC.

#### **4.3.9. The effect of conversion**

The conversion process will not interrupt the corporate personality of the company concerned. The body throughout will remain subject to company law but after conversion will cease to be subject to charity law and regulation but become subject to the CIC regulatory regime.

The company by virtue of the issue of the new certificate of incorporation, by the Registrar of Companies on the authorisation of the CIC Regulator, becomes a community interest company, and the changes in the company's name and Articles take effect.

A CIC cannot be a charity once the conversion takes effect and the company will be removed from the register of charities. The removal will have effect from the date on which the Registrar of Companies issues the new certificate of incorporation. The directors of the company are required to notify the Charity Commission, or Scottish Charity Regulator, of the constitutional change (see Charity Act 1993 s.3(7)(b)).

Converting a charitable company to a CIC brings new constraints and obligations and a change in the regulatory regime. You are recommended to consult the Charity Commission and/or to take professional legal or accountancy advice on whether a CIC is the best way to run your enterprise before proceeding with the conversion of your charitable company. Also, please read [Chapter 6](#) regarding the asset lock and [Chapter 8](#) regarding continuing obligations.

#### **4.3.10. Accounting reference dates**

It should be noted that the issue of a new certificate of incorporation does not have any effect on the made-up date for the company's annual return or the company's accounting reference date. As the company's CIC Report is filed with the annual accounts a CIC Report is required for the accounting period in which the conversion is made. If you are considering converting late in an accounting period you may wish to defer conversion rather than to have to prepare a CIC Report covering a very short period (see [Chapter 8](#)).

#### **4.3.11. Power of the Charity Commission to quash the conversion**

The Charity Commission has the power to seek an order from the court to quash the conversion of a charitable company, if the Registrar of Companies has registered the change of name resolution without the resolution being accompanied by the Commission's prior written consent.

You may also wish to refer to the [CAICE Act section 37](#) and the [CIC Regulations 2005 parts 3 & 4](#).

#### **4.3.12. Conversion of a CIC into a charity**

The provisions enabling a CIC to convert to a charitable company are dealt with in Chapter 10.

## **4.4. Converting an Industrial & Provident Society in England, Wales, Scotland or Northern Ireland to a CIC**

### **4.4.1. Background**

There are no provisions in the CAICE Act dealing with an IPS converting to a CIC. It is, therefore, a two-part process ([Chapter 2.2](#) refers this position).

The IPS converts first to an 'ordinary' company under section 52 of the Industrial and Provident Societies Act 1965 (IPS Act 1965) and then from the 'ordinary' company to a CIC under section 26(2) of the CAICE Act.

The conversion, from an IPS to an 'ordinary' company, itself (under section 52 of the IPS Act 1965) does not cause any interruption to the legal personality, neither does converting from a 'normal' company to a CIC. Therefore, a conversion using section 52 of IPS Act 1965 followed by CAICE Act section 26(2) will mean that the assets are automatically transferred.

Once the IPS has been converted to being an 'ordinary' company, it is subject to the Companies Act 2006 regime, so any charges which require a registration, will need to be registered.

The following link provides details of [Companies House guidance booklet GP3 'Life of company – Part2 Event Driven Filings](#).

### **4.4.2. Eligibility**

To be eligible to be a CIC an IPS must, in the opinion of the CIC Regulator, satisfy the community interest test. The test is whether a reasonable person might consider that the company's activities are being (or its proposed activities will be) carried on for the benefit of the community. A company must continue to satisfy the test so long as it remains a CIC.

### **4.4.3. The Process**

To convert from an IPS to a 'normal' company and then from a 'normal' company to a CIC the society will need to:

1. Contact the [Charity Commission](#) (England or Wales) or the [Scottish Charity Regulator](#), or [HMRC](#) (if an exempt charity in Northern Ireland) to discuss the implications of the proposed conversion.
2. If registered in England, Wales or Scotland send to the Financial Services Authority an application for registration of a special resolution for the conversion of an IPS to a company. If registered in Northern Ireland send a copy of the resolution to convert from an IPS to a company to the Registrar of Industrial and Provident Societies.

3. To register the company you are required to deliver to Companies House the following completed documents, with a fee:

[\(Click here for guidance on downloading forms\)](#)

- ❖ Memorandum of Association
- ❖ A printed copy of the Articles of Association that comply with the requirements imposed by section 32 of the CAICE Act and part 3 of the CIC Regulations 2005, or which are otherwise appropriate in connection with being a CIC (see Chapter 5). Please note that a CIC cannot rely on the default Articles under the Companies Act 2006. The link will take model Articles for different types of CICs and model Articles with explanatory notes.
- ❖ Form IN01. Requires details of the company's proposed name; whether limited by shares or guarantee public or private; the first directors (and secretary if applicable); the intended situation of registered office; a statement of compliance etc.
- ❖ Form CIC36. Requires the company's community interest statement. The purpose of the community interest statement is to confirm that the company will provide benefit to the community. It does this by describing its intended activities who they will help and how. The link will take you to a copy of the form and an example of a completed form.
- ❖ Form CIC 36 continuation sheets (use only if needed).
- ❖ A Cheque for £35 made payable to "Companies House"

The Registrar of Companies will pass copies of these documents to the Regulator of CICs to consider whether the company is eligible to form as a CIC. If eligible and if the documents are acceptable to the Registrar of Companies the documents will be placed on the public record and a certificate of incorporation will be issued. The company by virtue of the issue of the new certificate of incorporation becomes a CIC, and the changes in the company's name and Articles take effect.

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Maindy  
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139 Fountainbridge  
Edinburgh  
EH3 9FF

Registrar of Companies  
(Northern Ireland)  
Companies House  
2nd Floor  
The Linenhall  
32-38 Linenhall Street  
Belfast  
BT2 8BG

#### 4.4.4. Examples of completed forms

Explanatory notes and examples of how forms should be completed

- ❖ [Example of a completed Form CIC 36](#)
- ❖ [Models of Articles of Association](#) *with explanatory notes.*

*I must emphasise that the example(s) are provided for assistance and guidance only.*

## **4.5 Local Authorities and Community Interest Companies**

### **4.5.1. Why are CICs relevant to local authorities?**

As the CIC form is as flexible as the “ordinary” company form, it has many potential applications in both the private and public sectors.

Local authorities may find themselves dealing with CICs when they invite tenders for outsourced services. Alternatively, local authorities may themselves set up CICs with a view to:

- “Ring-fencing” activities in a distinct corporate vehicle; and/or
- Having a particular kind of relationship with outside business partners or wider stakeholder groups; and/or
- Carrying on activities on a more or less “commercial” footing, but with an externally validated assurance of “community benefit”.

The CIC form may be suitable for use in the context of a number of initiatives relevant to local authorities, such as local strategic partnerships, local area agreements, the transfer of publicly-held assets to community groups, and school companies.

Local authorities / their staff could be involved in a CIC in a variety of different ways: e.g. as members, directors / appointees of director, creditors.

Generally:

- CICs in which local authorities are involved will be subject to the same rules and restrictions as other companies with local authority participation;
- Local authorities will not be able to do things through CICs, which they could not do through “ordinary” companies.

### **4.5.2. Tentative conclusions**

Possible advantages of CICs as a vehicle for local authority activities may include (depending on individual circumstances and stakeholders):

- The assurance of community benefit going beyond the local authority’s own direct involvement in the company;
- Transparency;

- Supervision by an independent, “light touch” Regulator who is committed to providing a high level of service to CICs and applicants for CIC status;
- Adaptability (some of the restrictions may be inconvenient, but in many respects CICs are as flexible as an ordinary company).

Possible limitations of CICs may include:

- The CIC form’s relative novelty;
- That there is not quite as much freedom as with an ordinary company;
- The restrictions on returns to outside investors; and
- The fact that there are some additional regulatory burdens.

## 4.6. The Community Interest Test

Most ordinary companies, even those that provide benefits to the community, are set up and run mainly for the benefit of their own members and employees. CICs are different. Their primary purpose is to provide benefits to the community, rather than to the individuals who own, run or work in them.

In the legislation, this core principle is set out in terms of the “community interest test”. A company satisfies the community interest test if a reasonable person might consider that its activities (or proposed activities) are carried on for the benefit of the community (see CAICE Act section 35).

All companies applying to be registered as CICs must provide the CIC Regulator with evidence that they will satisfy the community interest test. To enable the CIC Regulator to decide whether they will satisfy the test, applicants are required to deliver a community interest statement to the Registrar (see Chapter 4.1 and 4.2 of this guidance, and CIC Regulations 2005 Parts 2 & 4).

When the CIC Regulator considers whether a company will satisfy the community test, the CIC Regulator is taking a view about the likely course of its future activities, and what reasonable people might think of them. Once a company has been registered as a CIC, it must continue to satisfy the test for as long as it remains a CIC. The CIC Regulator may take enforcement action against a CIC if the CIC Regulator forms the view that it no longer satisfies the test (see Chapter 11 of this guidance).

In order to determine whether your company satisfies (or will satisfy) the test, you need to consider:

- the purposes for which it is set up;
- the range of activities in which it will engage; and
- who will be seen as benefiting from its activities.

The community interest test is a test of the motivation or underlying purpose of a CICs activities. In order to satisfy the test a company must show that a reasonable person might consider that the purpose towards which its activities are ultimately directed is the provision of benefits for the community, or a section of the community (on the meaning of “community” for these purposes, see Chapter 2 of this guidance).

It is not necessary that each activity carried on by the CIC must in itself be directly beneficial to the community. But it is important that everything that a CIC does should in some sense contribute towards achieving a purpose that is beneficial to the community.

For example, a CIC whose activities include manufacturing and selling a particular product does not have to show that that product benefits the community – although that might be one way in which it could satisfy the community interest test in relation to these activities. It could equally well satisfy the test by virtue of the fact that the profits from its sales of the product in question are to be devoted to charitable or other community benefit purposes.

In some cases, it will be necessary to take account of possible detriments to the community arising from a CIC's activities. Clearly, an otherwise beneficial activity which a reasonable person might consider to have materially detrimental consequences for the community or a section of the community (which may or may not be the same community which the CIC aims to benefit) may not satisfy the community interest test.

However, the legislation provides that there are two kinds of activities, which in ordinary circumstances might be considered "beneficial", but which will prevent a company being eligible to be a CIC. These are:

- Political campaigning and activities intended to support political campaigning. This is because the legislation is designed to ensure that the CIC Regulator is not drawn into any political debates by having to reach any sort of view on the merits of particular political aims or programmes and
- Activities which a reasonable person might consider to benefit only the members of a particular body or the employees of a particular employer: this is a crucial distinction between CICs and most "ordinary" companies.

Note that there is no prohibition on a CIC doing things that benefit members of a particular body (e.g. its own shareholders), or its own employees (or the employees of another employer). For example, some CICs would be unable to provide much in the way of benefits to the community if they did not also pay salaries to their employees and directors; and some CICs will be better able to realise their community benefit objectives if they can attract investors by paying dividends to their shareholders.

However, a company will be disqualified from satisfying the community interest test if it engages in activities that a reasonable person might consider benefit, for example, its members or employees without contributing towards any wider community benefit. A company which is established primarily to benefit its members or employees rather than external stakeholders will therefore have to show that it will deliver some wider benefit if it is to be eligible for CIC status. These wider benefits can arise in several ways as the following examples illustrate.

- A company formed to provide its members with a service which meets a pressing social need or to provide jobs to disadvantaged people who would otherwise be unlikely to find employment could satisfy the test because its activities would benefit the wider community as well as its members or employees.

- A sports club for employees of a business may only satisfy the test if it provides a wider community benefit, for example, by making its facilities available to the local community or providing training facilities not otherwise available in the area.
- A company formed by the employees of a business solely for their own profit such as a bulk purchasing discount scheme would not satisfy the test.
- If, however, the sports club ran a purchasing scheme as an incidental activity which contributed to the community objectives of the club this may not affect its eligibility to be a CIC.

This can be a difficult area. If you are concerned that the activities of your proposed CIC (or proposed new activities of an existing CIC) may be considered only to benefit the members or employees of a particular body, you are strongly recommended to seek advice from the CIC Regulator's office (or discuss the matter with your professional advisers) before submitting a formal application or taking any other decisive steps.

## **4.7. The role of the Registrar and the CIC Regulator**

This chapter is only concerned with the incorporation and conversion processes. The Registrar's and the CIC Regulator's roles in other processes are covered in the chapters dealing with those processes.

A more detailed explanation of the role of the CIC Regulator is given in Chapter 11. The Registrar of Companies is a statutory office holder responsible for registration of companies and maintaining the public records relating to companies. There are separate, but linked, registries and Registrars, for companies registered in England and Wales, Northern Ireland and Scotland. The Registrar of Companies for England and Wales is the Chief Executive of Companies House Agency- an executive agency of the Department for Business Innovation and Skills (BIS). The Registrar for Scotland is based in Edinburgh and the Registrar for Northern Ireland is based in Belfast..

The Registrars and the CIC Regulator each have independent roles in the creation of CICs. The Registrar's job is to ensure compliance with the requirements that apply to all companies. The CIC Regulator is only concerned with the requirements specific to CICs. For convenience the Registrar acts as a single entry point for documents and collection of fees.

A CIC is a special form of limited company and like all other companies is registered by the Registrar of Companies, in Cardiff, Edinburgh, or Belfast, as appropriate.

Applications for new incorporations or conversion of existing companies to CICs are made by sending the appropriate documents (see Chapter 4.1, 4.2 or 4.3 and Chapter 5 of this guidance) to the Registrar who will refer them the CIC Regulator to consider whether the company is eligible to become a CIC (see Companies Act 2006 S.9, and CAICE Act 2004 s.36, 36A, 36B & 37, 37C, 38).

If the CIC Regulator is satisfied that the company is eligible the CIC Regulator will notify the Registrar of the CIC Regulator's decision. If the Registrar is also satisfied that all the documents are in order the Registrar will then register the documents and issue a certificate of incorporation of the company as a CIC.

### **4.7.1. Decisions by the CIC Regulator**

Before reaching any final decision that a company is ineligible to be formed as or become a CIC, the CIC Regulator will, as a matter of good administrative practice, notify the applicants of the CIC Regulator's proposed decision and the proposed reasons for it, giving them an opportunity to respond. If the CIC Regulator decides that the company is not eligible to be a CIC the CIC Regulator will send a letter to the applicant stating the reason for this decision.

Two months will then elapse to allow the applicant to register an appeal against the decision. If no appeal is received the CIC Regulator will give notice of the CIC Regulator's decision to 25

the Registrar. The Registrar will then return the application documentation to the company to retain.

The Registrar makes no judgement on the documents other than considering whether they are in order for registration and checking that the proposed directors are not disqualified.

The CIC Regulator has to decide, on the evidence available to the CIC Regulator (in particular the community interest statement) whether the company is eligible to be a CIC. The CIC Regulator's job is to ensure that the purposes and intended activities of the company and its constitution comply with the CAICE Act and CIC Regulations 2005 and in particular satisfy the community interest test (see Chapter 4.4).

The CIC Regulator's mandate is to assist and encourage companies to become CICs by operating a light touch regulatory regime. You will assist in the CIC Regulator's task if when delivering documents you provide as much useful information as possible. You may provide additional information in a separate letter or in subsequent correspondence (and the CIC Regulator may seek further information from you) but only the prescribed documents may be filed on the public record. It may sometimes therefore be necessary to file amended formal documents if for example the CIC Regulator considered that the Articles of Association were unacceptable.

The CIC Regulator's Office is available to discuss general points but cannot give specific advice in advance of submission of applications or prejudge the CIC Regulator's decision. They aim to avoid formal rejection of applications due to minor shortcomings and will try to resolve these by correspondence or telephone calls whenever possible.

#### 4.8. Where to file documents and details of fees

This Chapter is about the filing process and is relevant to the filing of all documents and payment of all fees not only those relating to the creation of a CIC. The individual documents are dealt with in specific Chapters and Annexes.

Various documents referred to in these notes have to be delivered to the Registrars of Companies. Which is the appropriate office is determined by the situation of the Registered Office of the company as stated in the incorporation application form (or prior to 1 October 2009 the Memorandum and Articles of Association) (see the Companies Act 2006 s.9).

For companies with their Registered Office situated in England and Wales or in Wales the appropriate office is Cardiff; for companies with their Registered Office in Scotland the appropriate office is Edinburgh and for companies registered in Northern Ireland it is Belfast.

Documents may be delivered by hand (personally or by courier) by post or by Hays Document Exchange Service (DX).

The full addresses are:

<b>The Registrar of Companies</b> Companies House Crown Way Cardiff CF14 3UZ DX 33050 Cardiff	<b>Registrar of Companies (Scotland)</b> Companies House 4th Floor Edinburgh Quay 2 139 Fountainbridge Edinburgh EH3 9FF DX 235 Edinburgh or LP – 4 Edinburgh 2
Documents delivered to the London office (21 Bloomsbury Street, London WC1B 3XD) will be sent on to the appropriate office for processing; this may cause a short delay.	
<b>The Registrar of Companies (Northern Ireland)</b> Companies House 2nd Floor The Linenhall 32-38 Linenhall Street Belfast BT2 8BG	

##### 4.8.1. Electronic filing of documents

In electronic delivery of documents to form as a CIC is not available at present, but once formed CICs will be able to submit other documents, such as, annual returns, appointment of directors, change of directors and change of accounting reference dates electronically. For details of electronic filing contact the Companies House website [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

## 4.9. Fees

CICs pay the same fees to the Registrars of Companies as any other company but the Regulator charges an additional fee of £15 for performing certain of her functions.

A fee of £15 is therefore payable on each of the following occasions:

- ❖ On delivery of the documents for incorporation of a new company as a CIC.
- ❖ On delivery of the documents for conversion of an existing company to a CIC.
- ❖ On delivery of the community interest company report (with the annual accounts).

For the convenience of CICs these fees will be collected on the CIC Regulator's behalf by Companies House.

Cheques should be made payable to "Companies House" for England, Wales, Scotland and Northern Ireland. Payment of any other fees due at the same time can be included in the same cheque.

See the full details of the combined fee for the functions performed by the Registrar and the Regulator.

### 4.11.1. Fees for England, Wales, Scotland and Northern Ireland

The fees below are payable by CICs on delivery of the documents relating to the listed events (See Chapter 4.6). The amount in the Total column should be delivered with the documents to the Registrar of Companies. Cheques should be made payable to "Companies House".

<b>Event</b>	<b>Companies House Fee</b>	<b>Regulator Fee</b>	<b>Total Fee</b>	<b>Note</b>
<b>Incorporation as a CIC</b>	£20	£15	£35	
<b>Conversion of a company to a CIC</b>	£10	£15	£25	1
<b>Conversion with a change of status (Re-registration)</b>	£20	£15	£35	2
<b>Change of status of an existing CIC (Re-registration)</b>	£20	none	£20	3
<b>Change of name</b>	£10	None	£10	
<b>Annual return (paper)</b>	£30	None	£30	
<b>Annual Return (electronic)</b>	£15	None	£15	

<b>Event</b>	<b>Companies House Fee</b>	<b>Regulator Fee</b>	<b>Total Fee</b>	<b>Note</b>
<b>Annual accounts &amp; CIC report</b>	None	£15	£15	
<b>Voluntary dissolution</b>	£10	None	10	

**NOTES:**

1. There is no Companies House conversion fee as such but as the conversion involves a change of name the £10 change of name fee is payable
2. Change of status (re-registration) is where a company changes from a public to a private company or vice versa in which case the re-registration fee of £20 is payable but the change of name fee is not charged providing the change is only from Limited (Ltd) to Public Limited Company (PLC) or vice versa. If a more substantial change is made in the name the £10 change of name fee would have to be paid.
- 3 This fee is payable where a CIC changes from a public to private company or vice versa.
- 4 Full details of the fees charged by the Registrar are available from Companies House and are on the Companies House web site [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).
5. The CIC Regulator's fees are prescribed in Part 10 of, and Schedule 5 to, the CIC Regulations 2005.