

Q.

What's this Community Interest Company I keep hearing about? Is it the new legal form for charities that has been proposed?

A.

They are two quite separate things, though they both arose from a series of recommendations included in the Government's Strategy Unit report *Private Action, Public Benefit* (2002).

COMMUNITY INTEREST COMPANY

Private Action, Public Benefit proposed the introduction of a new type of company, the **Community Interest Company** (or CIC, pronounced "kick"), particularly intended for use by social enterprises. The proposed legislation to introduce CICs is in the second half of the Companies (Audit, Investigations and Community Enterprise) Act, commencing at section 23.

Essentially, the intention is to offer a degree of regulation for social enterprise companies that is less stringent than that applying to charities, but will still protect the CIC's assets in the hope that this will encourage potential funders and supporters.

In summary, the characteristics of the CIC will be:

- CIC status will be an overlay on one of the existing forms of limited company. An organisation will register as a company limited by guarantee, or as a company limited by shares, or as a public limited company, simultaneously applying for CIC status to the CIC Regulator.
- The Regulator will exercise a lock on profits and assets belonging to a CIC, including the power effectively to confiscate a CIC's property (by ordering that the property be transferred to an officer called the Official Property Holder).
- A proposed CIC must pass a "community interest test", which will be "materially wider than the charitable test of public benefit".
- It will not be possible for an organisation to be both a CIC and a charity. CICs will be more lightly regulated than charities but will not have the benefits of charitable status, even if their objects are entirely charitable in nature.
- CICs will be able to issue shares with a fixed or capped return but otherwise will not be able to distribute profits (clearly this can apply only to companies limited by shares, not those limited by guarantee – the latter cannot issue shares at all).

CICs will further be required to submit annual reports on how well they have pursued their community interest, and may be investigated by the CIC Regulator in the event of complaints against them.

CIC status is intended for use by social enterprises: organisations that trade for all or most of their income, but whose primary objectives are social, not economic. In a working paper that accompanied the consultation exercise, the examples used for illustrative purposes were a holistic therapy centre and childcare facilities, while a sports facility provided for a company's employees was given as an example of a project that probably would *not* qualify for CIC status.

CIC status may also be suitable for more conventional voluntary organisations that cannot qualify for charitable status, either because their purposes are not strictly

charitable in law or because they are not prepared to accept the constitutional restrictions which accompany charitable status (e.g. some user-controlled projects).

The Companies (Audit, Investigations and Community Enterprise) Act can be found at <http://www.hmso.gov.uk/acts/acts2004/20040027.htm>

The DTI has started issuing a series of guidelines regarding CICs. The first two are "An Introduction to Community Interest Companies" and "The Regulator of Community Interest Companies", both available at <http://www.dti.gov.uk/cics/>

It is intended that the first CIC applications will be considered in July 2005.

CHARITABLE INCORPORATED ORGANISATION

The Charities Bill, which was published on 20th December 2004, introduces the concept of the **Charitable Incorporated Organisation**, or CIO, as an alternative to the commonly-used **company limited by guarantee** for charities wishing to enjoy corporate status and to offer limited liability to their members. The primary benefit here is the removal of dual regulation and reporting requirements and of the occasional conflict between company and charity law.

Detailed regulations regarding CIOs are in schedule 6 to the Bill, which contains sections on:

- Name & Constitution
- Registration
- Conversion, Amalgamation & Transfer
- Winding Up, Insolvency & Dissolution
- Miscellaneous
- A further set of provisions, covering
 - Powers
 - Constitutional requirements
 - Third parties
 - Duties
 - Personal benefits and payments
 - Procedure
 - Amendment of constitution
 - Registration and coming into effect of amendments

CIO status will only be available to registered charities and will be conferred by the Charity Commission. CIOs will not have to comply with Companies House document filing requirements.

After five years it is intended that the need for forms of incorporated charity other than the CIO will be reviewed, which may mean the end for the charitable company limited by guarantee.

The full text of the Charities Bill will be found at <http://www.publications.parliament.uk/pa/ld200405/ldbills/015/2005015.htm> and the accompanying explanatory notes at <http://www.publications.parliament.uk/pa/ld200405/ldbills/015/en/05015x--.htm>

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