

KEY GUIDES



Charitable Incorporated Organisations

2nd edition

Gareth G. Morgan

dsc

directory of social change

What they said about the book...

'This is the first comprehensive publication to explain everything you need to know about CIOs, from what a CIO is and why your charity may want to become one to clear analyses of the advantages and disadvantages. With Professor Morgan's excellent insights into what it really means to operate as a CIO, I would strongly advise anyone considering this legal structure to read this invaluable handbook.'

Elizabeth Chamberlain, Head of Policy and Public Services, NCVO

'A vital tool for any charity contemplating whether charitable incorporated organisation status is appropriate for them. We found ourselves in that situation – for the non-lawyers amongst us it was an essential reference manual, and has been ever since.'

Mike Daw, Chief Executive, National Eye Research Centre

'As the Chair of Trustees of a small charity with an outdated constitution, our decision to convert to a CIO was necessary but daunting. Finding Gareth Morgan's book was greatly reassuring and it guided us through the whole process. The attention to practical detail was invaluable. I also consulted the book when setting up a new charity, because its advice about structures is so helpful.'

Dr Julie Doughty, Lecturer in Law, Cardiff University

'Although it is now firmly established in the legal landscape, there is currently little published guidance available on how to run a CIO. Gareth Morgan's book fills that gap – it is both practical and technical and, as such, is an important resource for charities and advisers alike.'

Alice Faure Walker, Senior Consultant, Bates Wells Braithwaite

'Gareth Morgan's book demonstrates a unique understanding of the similarities and differences of the CIO structures which operate throughout the UK. This is a very readable comparative study which will be of interest to charities and charity practitioners across the country.'

Alastair Keatinge, Partner, Head of Charities and Social Enterprise, Lindsays Solicitors, Scotland

'Gareth Morgan is well known for his interest in and mastery of the detailed, technical aspects of charity administration and in particular of CIOs. As a barrister specialising in charities, I shall continue to make use of this clear, detailed and practical book both for checking specific points and to recommend to my clients, especially those thinking about establishing a CIO.'

Francesca Quint, Barrister, Radcliffe Chambers

'Professor Morgan is a leading academic in the field of charity finance. He has an unrivalled knowledge and understanding of the intricacies of the legal and regulatory matters that charities and their advisers wrestle with daily.'

Christine Scott, Head of Charities and Pensions, The Institute of Chartered Accountants of Scotland

'Professor Morgan is one of the UK's leading authorities on charities – I recommend his book to both students and practitioners as the best source of authoritative information on this increasingly important third sector legal structure.'

Roger Spear, Emeritus Professor of Social Entrepreneurship, Open University, and Roskilde University, Denmark

What they said about the first edition...

'This guide is an important step in the development of CIOs. I therefore warmly commend it.'

Lord Hodgson of Astley Abbotts, CBE, Official Reviewer of the Charities Act 2006

'The combination of a straightforward approach, together with sufficient level of detail on the increasingly important CIO structure, means that guidance of the kind provided in this book will be most welcome for charities, their advisors and students of the charitable sector.'

Professor Debra Morris, Director, Charity Law and Policy Unit, University of Liverpool

'The author has done an impressively thorough job of capturing the broad concepts of CIOs as well as the detailed provisions of the statutes and regulations. The subject is made both lucid and accessible. Importantly, the author also deals with the framework for CIOs across the UK, including the significant differences between the legal forms in England and Wales, Scotland and Northern Ireland.'

James Sinclair Taylor, Partner, Russell-Cooke Solicitors

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About the author

Gareth G. Morgan has been involved in advice, research and teaching on charity structures, regulation and accounting for more than 25 years.

Most of his time is now spent as a senior partner of The Kubernes Partnership LLP, a small firm of charity consultants based in Yorkshire, England, and East Lothian, Scotland. Through this work he helps to support charitable organisations across the UK and other professionals advising charities in the areas of formation of new charities, charity accounting and tax issues, and other aspects of charity regulation. He has advised on the formation and registration of a wide range of CIOs (including SCIOs), and on the conversion of many organisations to the new structures, including both existing charities and non-charitable bodies taking on charitable status.

He is Emeritus Professor of Charity Studies at Sheffield Hallam University, where he was formerly course leader of the MSc in Charity Resource Management and led the inter-faculty Centre for Voluntary Sector Research. He continues to support a variety of charity-related research and policy work. Over the years he has worked on a range of research projects concerned with charity regulation and accounting. He is a regular speaker at charity conferences and is the author or co-author of many research papers and articles in these areas.

Gareth is an Associate Member of the Society of Writers to Signet, a Fellow of the Association of Charity Independent Examiners, a Full Member with Diploma of the Institute of Fundraising and an Academic Fellow of the Association of International Accountants.

He is an active member of the Charity Law Association, where he has contributed to several of its working parties (especially those concerned with CIOs). He served for six years on the Charity Technical Committee of the Institute of Chartered Accountants in England and Wales (ICAEW) and is now on the Charity Expert Panel of the Institute of Chartered Accountants of Scotland (ICAS). He has also served as trustee in a wide range of charities.

About the series

This series of key guides is designed for people involved with not-for-profit organisations of any size, no matter how you define your organisation: voluntary, community, non-governmental or social enterprise. All the titles offer practical, comprehensive, yet accessible advice to enable readers to get the most out of their roles and responsibilities.

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The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of independent charities, voluntary organisations and community groups are fundamental to achieve social change. We exist to support these organisations in achieving their goals.

We do this by:

- providing practical tools that organisations and activists need, including online and printed publications, training courses, and conferences on a huge range of topics;
- acting as a 'concerned citizen' in public policy debates, often on behalf of smaller charities, voluntary organisations and community groups;
- leading campaigns and stimulating debate on key policy issues that affect those groups;
- carrying out research and providing information to influence policymakers, as well as offering bespoke research for the voluntary sector.

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Foreword


Small charities are the backbone of civil society, undertaking their hugely important work in communities all around the UK. We have a legal framework that seeks to not only preserve public trust and confidence but also minimise red tape. The charitable incorporated organisation (CIO) and its Scottish and Northern Irish equivalents help to continue our long tradition of doing good and supporting others.

The CIO is the only legal structure designed just for charities in the UK. Charities often decide on adopting a corporate structure because it has legal personality and limited liability for its members and trustees. The CIO provides these benefits. But, unlike the existing company structure, the CIO is subject to a single regulatory regime – under charity law – rather than a dual regime under both charity and company law.

The CIO is now five years old in England and Wales. Over 13,000 have been registered and it is now the most popular structure for those setting up a charity. It has quickly become an established part of the landscape alongside existing organisational structures.

In this book, Gareth Morgan explains clearly, and in plain language, what is involved in setting up and running a CIO in England or Wales (and its Scottish and Northern Irish equivalents) and converting into a CIO from an existing charitable structure. The book sets out the pros and cons of the CIO compared to other legal structures. I know that many charity trustees have benefited from the straightforward explanations and practical guidance that Gareth provides.

As Minister for Civil Society, I am always on the lookout for ways to help small and medium-sized charities, making their lives, and those of their committed volunteer trustees, that little bit simpler. I was therefore delighted to take the CIO Conversion Regulations through Parliament in 2017. These give charitable companies and community interest companies the option to convert to the CIO structure, should they wish, enabling them to take advantage of the simpler structure. The new edition of this book includes details of these conversion procedures in England and Wales, among various other updates. I am sure that it will continue to be a valuable resource for many charities and their trustees for years to come.



Tracey Crouch MP, Minister for Sport and Civil Society

Preface

Any charity begins not with a legal structure but with individuals who have a passion for a cause. But most causes require funds to be raised or income to be generated, and, if the cause is charitable, there are enormous advantages in setting up an organisation as a charity – in terms of tax concessions, reputation and the protection of donors who support the cause.

But, until five years ago, most charitable organisations had to make do with legal structures which were never specifically designed for charities. The advent of charitable incorporated organisations (CIOs) thus marked a massive change. They were first enacted in 2005 in Scotland (the SCIO) and then for England and Wales in the Charities Act 2006. SCIOs were implemented from April 2011 and the regulations for English/Welsh CIOs finally took effect from January 2013. The CIO now offers a legal structure specifically for charities, which allows charities to operate as legal entities with limited liability, but without all the complications of company law.

As I had long predicted, once CIOs became available, they quickly became the most popular form for establishing new charities, especially for moderate-sized organisations, which are at the heart of the development of the third sector. In addition, many existing charities have concluded that it makes perfect sense to convert to become CIOs.

Yet, whilst the concept of a CIO is very simple, it is underpinned by several layers of legislation. Those wanting to establish new CIOs or considering the conversion of existing charities need to understand, at least in outline, the principles behind the CIO structure, the requirements for CIO constitutions, the process of registering a CIO and the issues for trustees in operating a CIO, and they also need to have some appreciation of what happens if things go wrong and a CIO cannot meet its liabilities. The book also seeks to provide an overview of various aspects of charity law and regulation as they apply to CIOs.

These issues matter not only to those seeking to form a CIO – they affect anyone working with third sector organisations, whether professional advisers, funders, suppliers, bankers or, most of all, those who become charity trustees of CIOs once they are formed. A clear understanding of CIOs is also vital for those in voluntary sector infrastructure organisations. For students on academic courses concerned with the sector, a sound appreciation of charitable structures is a starting point for all other issues.

This book seeks to explain the principles, constitutional requirements and regulatory basis for CIOs throughout the UK, for readers in all these categories. It aims to cover CIOs in sufficient detail to explain the process of setting up and registering a new CIO, and to outline the principles for taking an existing charity through a conversion to a CIO. For readers who need to understand the full legal background, there are footnotes throughout referring to the relevant provisions in the legislation. However, in many cases there are additional issues which cannot be covered here, especially where there is interaction with other areas of law (employment, premises, contracts, etc.): professional advice will often be needed to cover issues outside the scope of this book.

Of necessity, some of the content remains speculative as some provisions in the CIO legislation have yet to be tested. Any comments or feedback would be gratefully received: please use the email address cio@kubemesis.co.uk.

I have been an unashamed enthusiast for the CIO, from when it was first proposed back in the mid-1990s through to its final implementation and even more so now that many thousands of CIOs have been established and charitable companies have the option to convert directly into CIOs. Although it took longer than expected to come to fruition, and the framework is certainly not perfect in all respects, I believe that the CIO offers one area where one can genuinely say that things are becoming more straightforward for the voluntary sector.

The CIO is not the right structure for every charity (as discussed in chapter 4) but, where the CIO form is appropriate, I believe it enables organisations to operate very effectively, with greater confidence for trustees, and greater clarity for other stakeholders. Of the various issues in the Charities Act 2006 (now consolidated in the Charities Act 2011), great attention was given to the new definition of 'charity' and the new emphasis on public benefit. But, whilst these issues are important, I believe the advent of the CIO is at least as significant for the effectiveness of the sector.

In this second edition, every chapter has been substantially updated now that CIOs have been a reality for over five years, and the process of converting charitable companies and community interest companies to CIOs (chapter 10) has been completely revised in the light of the new regulations effective from 2018.

Acknowledgements

From the initial proposals for CIOs in the 1990s and support by government from 2002 (see chapter 18 for more on the origins), I felt that the CIO structure would be valuable to many of the organisations with which I work and to others starting new charities. From 2004, when I began presenting seminars on the Draft Charities Bill, I found great enthusiasm – with many participants wanting to understand all the details on CIOs – and likewise with my students at Sheffield Hallam University.

It was the appetite of these people which led me to approach the Directory of Social Change (DSC) soon after CIOs were enacted for England and Wales with the idea of a book on the subject, as a parallel to my *Charity Treasurer's Handbook*. That was in 2007 (with the Cabinet Office then expecting CIOs to be implemented by autumn 2008).

Over the years, with the delays in the implementation of CIOs (and with SCIOs implemented before CIOs in England and Wales), the book had to be delayed, but I was delighted that the first edition was published in early 2013, only a few months after the implementation of CIOs in England and Wales. I am enormously grateful to John Martin (Publisher) and Lucy Muir-Smith (Editorial Manager) for all their support and patience over the period of almost six years from concept to publication. I wish to acknowledge their further support for this second edition now that CIOs have been established for some years. (I am also grateful for the input of Hazel Bird as copy editor for this second edition.)

One cannot write a book like this in isolation, and, beyond study of the legislation and documentation from charity regulators, much of the content has come from debating CIO concepts with others. I was privileged to serve on the CIO Working Party established by the Charity Law Association (CLA) in 2008/09 (commenting on the draft regulations published at that stage) and to have been involved in CLA and Scottish Executive consultations on the SCIO regulations. I was subsequently honoured to chair a superb CLA working party in 2016 commenting on the draft regulations for company–CIO conversions. I have been honoured to speak about CIOs at a wide range of conferences and seminars, both for charity practitioners and for professional advisers: the questions and comments at those events have done much to shape the book.

Nevertheless, when writing about a new concept like CIOs, there is a real risk of error or confusion, and I am grateful to a wide range of people who

made detailed comments on draft chapters for the first edition: their input led to numerous improvements. James Sinclair Taylor of Russell-Cooke Solicitors reviewed the entire manuscript in agreement with DSC: his input prompted clarification of many issues. I also had feedback from a number of people with particular expertise, including Jonathan Dawson (solicitor and adviser to Community Matters) on various chapters, Prof. Stefan Enchelmaier (University of Oxford) on chapter 1; Prof. Rory Ridley-Duff (Sheffield Hallam University) on chapter 3; Ian Oakley-Smith (PricewaterhouseCoopers) on chapters 12 and 17; Gavin McEwan (Turcan Connell, Edinburgh) on chapter 13; Prof. Oonagh Breen (University College, Dublin), Jenny Ebbage (Edwards & Co, Belfast), and Jill Steele (CCNI) on chapter 14; and Francesca Quint (Radcliffe Chambers) on chapter 16. For the second edition, I am particularly grateful for comments on chapter 10 by Alice Faure Walker (Bates Wells Braithwaite) and on chapter 11 from Adrian Pashley (Practical Law). Many others have contributed specific points which I have drawn upon. For both editions, I am also very grateful to civil servants at the Cabinet Office, the Department for Digital, Culture, Media and Sport and Scottish Executive, and to key members of staff at CCEW, OSCR and CCNI for responding helpfully to a wide range of queries, in some cases over several years. However, the final content, and all opinions expressed, remain very much my own: I take full responsibility for all remaining errors.

I owe a huge debt of gratitude to my wife and business partner, Sharon, who proofread all the early drafts of the first edition, identified points where explanations needed clarification, and did a huge amount with both editions to free me up to focus on the book: her support was truly amazing.

Ultimately, the value or otherwise of a book like this can only be judged by those who find themselves setting up and running CIOs, or advising others to do so. It is to all of you – the ‘CIO community’ – that the book is dedicated.

Gareth G. Morgan, April 2018

1 What are CIOs and why are they useful?

Charitable organisations (or voluntary organisations with charitable status) have existed in the UK for centuries without any special legal structure. Over time, a system of charity law developed over many centuries. In fact, modern charity law still owes much to the 1601 Statute of Charitable Uses, passed in the time of Elizabeth I (for more on the definition of ‘charity’ see page 21). But charity law has been mainly concerned with protecting charitable funds and property, and with the regulation of charities, rather than with specific legal structures. So, until recently, charities were normally set up using structures which are also used for many other types of organisation, rather than a specific form for charities.

Structures for charities – why CIOs?

In the earliest days, all charities were trusts: where individuals (trustees) came together on a personal basis to hold property or funds for charitable purposes. In due course, other structures developed, such as charitable associations: bodies with members, governed by a constitution, where members elect a committee to govern the association. Many larger charities are formed as charitable companies – not-for-profit companies which are also registered as charities. There are also other possibilities, such as charities established by Act of Parliament or by Royal Charter.

Nowadays, few people wanting to establish new charities are in a position to petition for Royal Charters or are able to seek private Acts of Parliament. So, in practice, until the advent of charitable incorporated organisations (CIOs) the vast majority of charities have been established using one of the three well-proven legal forms:

- the charitable trust (usually governed by a trust deed);
- the charitable association (usually governed by a constitution); or
- the charitable company (governed by articles of association).

A few charities are set up using other structures, in particular as a registered society (formerly known as an industrial and provident society or IPS): this is a corporate structure often used by mutual organisations (such as clubs, credit unions, or co-operative businesses which are owned

by the members). A registered society established for purposes which benefit the community (which includes charitable IPSs) is called a community benefit society (CBS).¹

Each of these forms – trusts, associations, companies, CBSs – has existed for many years, but none is specific to charities (they are discussed in more detail in chapter 4). But whilst each has some advantages they also have significant disadvantages.

Charitable trusts and associations are simple to set up and like CIOs have only one regulator, but they have two major limitations: firstly that they are not corporate bodies and secondly that they do not offer limited liability. These terms and issues are explored below.

Charitable companies do not have these limitations – a company is a corporate body and normally has limited liability – but for a charity to be a company it has to comply with various requirements under company law (as well as charity law) including regulation by the Registrar of Companies (Companies House). A CBS has some similarities to a company in that it is a corporate body with limited liability, but, as with all registered societies, it is registered with the Financial Conduct Authority (FCA) rather than Companies House, and IPS law has a number of differences from company law.

To get round these difficulties it has long been suggested that a completely new legal structure would make things much simpler for charitable organisations, their trustees and anyone who deals with charities. The idea was to have a structure which would be:

- specific to charities, so there was no uncertainty about charitable status;
- a corporate body;
- providing limited liability;
- *not* a company and so *not* subject to company law or regulation by Companies House;
- registered *only* with a charity regulator and therefore subject to only one regulator in terms of accounts and returns.

The obvious choice of name was to call it a ‘charitable incorporated organisation’. A CIO is an incorporated body; it is a charity; and it is a specific kind of organisation – a legal structure used only for charities.

¹ The new name arises from the Co-operatives and Community Benefit Societies Act 2003.

Three jurisdictions of CIOs in the UK

There are three forms of CIO, corresponding to the three systems of charity law in the UK (or three legal jurisdictions):

- A CIO established under the laws of England and Wales is registered and regulated by the Charity Commission for England and Wales (CCEW).²
- A CIO established under the laws of Scotland is called a SCIO (generally pronounced ‘ski-oh’) – it is registered and regulated by the Office of the Scottish Charity Regulator (OSCR).³
- A CIO established under the laws of Northern Ireland will be registered and regulated by the Charity Commission for Northern Ireland (CCNI).⁴

The CIO structure was first implemented in Scotland (SCIOs) from April 2011, then CIOs in England and Wales from January 2013. At the time of writing, CIOs cannot yet be formed in Northern Ireland, but implementation is expected around 2019.

This book considers all three forms of CIOs but, up to chapter 12, each chapter introduces the principles and then considers the detailed requirements for CIOs in England and Wales. The differences for Scotland and Northern Ireland are then explained in chapters 13 and 14. To refer collectively to these three jurisdictions in the book, the term ‘charity regulator’ is used to include CCEW, OSCR and CCNI. And, unless otherwise stated, the acronym ‘CIO’ is used to refer to all three forms.

Principles of a CIO

The main features of a CIO are as shown in table 1.1.

The rest of this chapter explores what these features mean in practice. It focuses on the legal principles for CIOs in England and Wales, but most of these principles are very similar for SCIOs and (when available) Northern Irish CIOs.

² Charities Act 2011, ss. 204–250.

³ Charities & TI (Scotland) Act 2005, ss. 49–64.

⁴ Charities Act (NI) 2008, ss. 105–122 and Sch. 7.

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Charitable Incorporated Organisations

Charitable Incorporated Organisations (CIOs) are now the most popular form for establishing new charities, so much so that many existing charities also are eager to convert. This book is unique in its exclusive focus on this important charitable structure, with fully updated text to cover changes in the first five years of CIOs in detail. This second edition has undergone numerous major updates and now includes:

- New procedures in England and Wales from 2018 for direct conversion of charitable companies to CIOs
- New OSCR procedures from 2016 for unincorporated Scottish charities converting to SCIOs
- Fully updated guidance on CIO registrations with the latest Charity Commission procedures
- Further guidance on CIO constitutions, including variations on Charity Commission models
- Up-to-date accounting issues for developments in the Charities SORP as applied to CIOs

By capturing the broad concepts of CIOs as well as the detailed provisions, this book provides voluntary sector practitioners and professional advisors with the practical guidance needed to establish new CIOs or convert existing charities.

‘A vital tool for any charity contemplating whether charitable incorporated organisation status is appropriate for them. We found ourselves in that situation – for the non-lawyers amongst us it was an essential reference manual, and has been ever since.’

Mike Daw, Chief Executive, National Eye Research Centre

‘As the chair of trustees of a small charity with an outdated constitution, our decision to convert to a CIO was necessary but daunting. Finding Gareth Morgan’s book was greatly reassuring and it guided us through the whole process.’

Dr Julie Doughty, Lecturer in Law, Cardiff University

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