



How to Incorporate a Charity to a CIO

Incorporating a Charity to a CIO

Many organisations think about changing legal structure when the trustees and management committees are concerned about personal liability. Incorporation means creating a legal identity for the organisation that is different to its members - a corporate body. In an unincorporated association (how many charities and voluntary and communities start out) or trust, the law does not recognise a difference between the organisation and its members - it is simply seen as a group of people.

The biggest advantage of incorporation is in the limited liability for members of the organisation and its governing body. A charitable incorporated organisation (**CIO**) can own property and sign contracts in its own name. You should think about becoming a charitable incorporated organisation if your charity has employees, owns property, signs contracts to complete work, has long-term financial commitments such as a lease or runs risky activities.

Unfortunately, an unincorporated association or trust can't simply convert to a charitable incorporated organisation. Instead, your organisation must register as a charity with the Charity Commission. The original charity will be closed down once everything has transferred to the new charitable incorporated organisation.



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If you are thinking about incorporating your existing charity into a CIO, we can offer advice and help you with the process.

Contact: info@cvac.org.uk

Steps to follow:

1. Check the constitution of the existing charity to see if there is a restriction regarding incorporation (this is not common but should be checked). If there is a restriction then Charity Commission approval must be sought first
2. Check the constitution of the existing charity to see if there is a dissolution clause. If there isn't then the constitution must be amended to include one
3. Talk to your pension provider about your plans. If you use a defined benefit scheme, incorporation may trigger certain pension liabilities so work with your pension provider before incorporation. It is likely you will need to take professional advice
4. Prepare the constitution for the new charity
5. Register the new charity (see Charity registration below)
6. Transfer all assets and liabilities from the old, unincorporated charity to the new charitable incorporated organisation – note you may need some legal advice if you are transferring property and land
7. Dissolve (close down) the old charity

Remember that you must follow the provisions in the consultation until the time that the old charity is dissolved.

You can register as a charity yourself or get help from our support team. You can download information about the charity registration application process and the forms you'll need from the Charity Commission website.

Once you submit your application, the Charity Commission will make an initial response within 15 working days. Try to reply quickly to any queries raised by the Commission or your application may be delayed. If you need help, contact us. When the charity has been registered you will receive formal notification showing the details that will be included on the Register of Charities (which is publicly available) and the registered number of the new charity.



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Charity Registration

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Transfer or Discharge of Assets, Liabilities and Obligations

The new organisation is now set up as a charitable incorporated organisation. The assets of the 'old' charity can be transferred (see below) to the 'new' charitable incorporated organisation. Everything must be legally transferred from the old organisation to the new charitable incorporated organisation so that problems over ownership of assets, liabilities and who is responsible for outstanding obligations, etc., do not occur in the future. A set of accounts at the date of transfer will have to be prepared and either audited or independently examined, depending upon the regime the original charity falls under. This will verify the value of assets and liabilities at the date of transfer and it is these values that will form the opening balances of the new charitable incorporated organisation.

If any debts are larger than the assets being transferred and the new charitable incorporated organisation does not have assets of its own to outweigh the debts, the debts cannot be transferred because this would mean an insolvent charitable incorporated organisation was being created.



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Next Steps:

Once you have completed the above steps there are a number of things you must do:

- Draw up a formal deed of transfer or members' resolution
- Transfer of land, buildings or investments
- Transfer of staff
- Transfer of property
- Inform your funders
- Inform your donors
- Open new bank accounts
- Transfer insurance
- Inform the statutory authorities, pension provider, utility companies etc.,
- Register members
- Update your stationary
- Dissolution of the 'old charity'