



Association of Accounting Technicians response to Conversion to a Charitable Incorporated Organisation

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1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Cabinet Office and Charity Commission consultation on “Conversion to a Charitable Incorporated Organisation” (condoc), published on 1 April 2016.
- 1.2. AAT is submitting this response on behalf of our membership and from a wider public benefit perspective.
- 1.3. AAT has responded to the specific questions raised in the condoc and has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. Furthermore, the comments reflect the potential impact that the proposed changes would have on charities, many of which employ AAT members or would be represented by our operationally skilled licensed members.

2. Executive Summary

- 2.1. AAT fully supports the introduction of the draft regulations (3.2, below).
- 2.2. The facility for charitable companies and CIC's to be regulated by the Charity Commission alone is seen as a desirable objective for such entities (3.3, below).
- 2.3. It is considered desirable for the regulations to contain the minimum barriers necessary for conversion and the draft regulations are believed to achieve this objective (3.7, below).
- 2.4. AAT believes that it is not necessary to have a phased introduction of applications for conversion to a CIO and that the proposed phasing places smaller charities at a significant disadvantage to larger charities (3.9, below).
- 2.5. AAT has concerns about the current conversion process for unincorporated charities (4.1 and 4.2, below).

3. Responses to Questions

- 3.1. The following paragraphs outline AAT's response to the proposals outlined in the consultation document.

Question 1: Do you support the introduction of these draft regulations?

- 3.2. AAT fully supports the introduction of the draft regulations as soon as possible in order to achieve the objectives set out in paragraphs 23 to 25 (condoc).

Question 2: Do you believe there is a demand for the introduction of these draft regulations? And if so, do you plan to take advantage of them?

- 3.3. AAT considers that there is a demand for the introduction of the draft regulations as set out in the condoc so that charitable companies and CIC's not only have a separate legal personality but also are only subject to regulation by the Charity Commission.
- 3.4. However, it must be recognised that the benefit of charitable companies limited by guarantee being only subject to charity law could be easily achieved by an amendment to the Companies Acts which would enable companies limited by guarantee which meet the requirements of a charity and that are registered with the Charity Commission to be removed from the scope of the Companies Act.
- 3.5. Furthermore, charitable companies limited by guarantee do not usually create potentially significant personal liabilities for its members so that the removal of personal liabilities by conversion to a CIO is not considered to be a major incentive to convert.

Question 3: Are there any measures in the draft regulations that you believe should be removed or changed? For example, are there other circumstances in which it would not be appropriate for the Commission to approve an application for conversion beyond those that have been set out in the draft regulations?

- 3.6. See AAT's response to question 4 below.

Question 4: Are there any measures missing from the draft regulations that you believe should be included?

- 3.7. The regulations need to reflect realistic measures and essential barriers to facilitate conversion to a CIO.
- 3.8. The proposed regulations are structured so as to tend towards setting out the grounds under which the Charity Commission would not approve an application to convert to a CIO. Otherwise there is a presumption that the regulations set out a procedure for conversion to be successfully achieved. The grounds for rejection are acceptable as realistic barriers and so should all be retained in the regulations, but equally it is not considered necessary to provide any additional barriers.

Question 5: Do you agree the measures should be phased in? Do you have any comments on the proposed phasing in of the measures?

- 3.9. AAT acknowledges that the Charity Commission needs to manage the workload for reviewing and approving applications. Indeed, paragraph 24 (condoc) recognises that smaller charities "*are more likely to have fewer resources and less capacity to deal with the issues which would arise from the transfer and this is of concern because smaller charities are believed to be the part of the sector which is most likely to wish to transfer to the CIO structure*".
- 3.10. The proposed timetable is, however, in conflict with the preceding statement and results in an overall period of one year to process all of the conversions with smaller charities being at a disadvantage to larger charities as regards the delay in achieving the benefits of conversion.
- 3.11. As referred to in 3.7 (above), the conditions required to be met for a conversion application to be approved by the Charity Commission are such that AAT considers it very unlikely for any charity to apply for conversion if it does not meet them. Therefore it follows that applications to convert would be rejected by the Charity Commission probably only in a small number of cases, possibly due to unintentional technicalities which are capable of rectification.

- 3.12. Consequently, AAT suggests that it could be that conversion is effective immediately upon formal application to the Charity Commission, but with the Commission having the right to cancel the conversion if it finds the conditions for conversion have not been complied with, in which case the charity would either rectify the failure to comply within a given short time frame or revert to its original status. In this way, charities could convert at any time they wish after the introduction of regulations without the need to have a phased introduction.

Question 6: Do you have any other comments about the regulations or issues that should be considered?

- 3.13. AAT does not wish to make any comments on the matter of conversion to CIO by charitable companies or CIC's. However, AAT would suggest that it would be desirable for the conversion process for unincorporated charities to be simplified to achieve the same objectives being sought by the regulations applicable to charitable companies and CIC's in providing a separate legal personality and removing the personal liability of the trustees. The complexity of the current requirements for unincorporated charities to convert (and the relatively high costs for smaller charities) is a deterrent to many charities wishing to undertake the process.

Question 7: Do you agree with our assessment of the impact and effect this legislation will have?

- 3.14. See the response to question 8 below.

Question 8: Do you have any comments to make on our assessment?

- 3.15. AAT agrees with the assessment of the impact and effect of the legislation insofar as the outcome should be expected to be an initial one-off additional cost for charities converting to a CIO and in principle to benefit from subsequent ongoing reduced costs although in reality the marginal costs or savings for smaller charities are not likely to be significant. Financial factors alone are unlikely to influence any entity's decision to convert to a CIO.

4. Conclusions

- 4.1. The proposed regulations for a charitable company or a CIC to convert to a CIO with the minimum of formality is supported by AAT, particularly as this removes the anomaly of being subject to both company law and charity law, which can result in a conflict between the requirements of each regulatory system. It also provides a separate legal entity with limited liability protection for those responsible for management in a way similar to a trading entity incorporated under the Companies Acts. However, it is recognised that charitable companies limited by guarantees do not usually expose its members to significant potential personal liabilities.
- 4.2. According to the National Council for Voluntary Organisations there were around 140,000¹ unincorporated charities in 2015 and paragraph 5 (conduc) states that there were 6,500 CIO's so it would appear that it is only a small proportion of unincorporated charities that have taken up the option of conversion. AAT would have expected that virtually all existing unincorporated charities would consider it desirable to adopt a CIO structure particularly in the light of the facility for trustees to avoid potential personal responsibilities, so it is likely that such entities perceive there to be barriers to the process of conversion. The risks of personal liability can be a deterrent to taking an appointment as a trustee and often creates an unfair burden for volunteers with philanthropic motives.

¹ [NCVO Data Big Picture](#)

- 4.3. Whilst not addressed in the condoc, AAT would suggest that it would be desirable for the conversion process for unincorporated charities to be simplified to achieve the same objectives being sought by the regulations applicable to charitable companies and CIC's in providing a separate legal personality and removing the personal liability of the trustees. The complexity of the current requirements for unincorporated charities to convert (and the relatively high costs for smaller charities) is a deterrent to many charities wishing to undertake the process (3.13, above).
- 4.4. The present procedures for unincorporated charities to convert to a CIO are effectively no different to a formal winding up of the existing charity and the creation of a new CIO with a new history. AAT considers it desirable that the process for conversion to a CIO should be as simple as possible, based on the re-designation of the existing charity as incorporated with the filing of a new constitution document and a re-designation of the officers of the charity, and the entity's history should be retained.
- 4.5. The proposed regulations for charitable companies and CIC's to convert to a CIO provide a mechanism for such entities to effectively have a continuous existence through the conversion process into their new status as a CIO, which should be the same criteria as for an unincorporated charity. AAT would therefore favour the conversion process for unincorporated charities being revisited with a view to simplification as an encouragement to convert.

About AAT

- 4.6. AAT is a professional accountancy body with over 49,800 full and fellow members² and 80,900 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 members in practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.7. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

5. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact AAT at:

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² Figures correct as at 31 March 2016