

Incorporation: new options emerge



Richard Armitage

Community transport organisations wanting limited liability have for many years chosen to be a company limited by guarantee, as well as a charity. Now two new forms of incorporation are heading for the statute books, one for charities and one for non-charitable social enterprises. **Richard Armitage** looks at the constitutional and organisational implications for CTs.

The subject of incorporation is, unavoidably, as dry as dust. Furthermore, for the moment, the new options will only apply in England and Wales. Nonetheless, all CT managers, trustees and board members, and anyone involved in developing community transport, should take a closer look at the new types of incorporation:

- The Charitable Incorporated Organisation.
- The Community Interest Company.

The Charitable Incorporated Organisation (CIO) is intended to provide charities with a new incorporated legal structure. The proposed legislation is to be found in

the new Charities Bill, which was re-introduced in the House of Lords in May 2005. Clause 32 and Schedule 6 make provision for a new legal form, the CIO, the first one to be created specifically to meet the needs of charities. Its purpose is to avoid the need for charities which wish to benefit from incorporation to have to register as companies and so be liable to dual regulation by Companies House as well as the Charity Commission.

CIOs will be administered solely by the Charity Commission. If your charity is already a company limited by guarantee, it will be allowed to convert to a CIO, by passing a suitable resolution and adopting a new constitution. Once conversion has been approved, the company will be removed from the Companies House register. There will, however, be no obligation to convert. The CIO's advantages are expected to be simpler governing documents, less bureaucracy, and lower annual fees.

The CIO is intended to provide registered charities with a simple method of also having limited liability status. The CIC, however, is a different animal altogether.

The Community Interest Company (CIC) will be a new type of company, designed for social enterprises that want to use their profits and assets for the public good. The Department of Trade and Industry (DTI) publicity says CICs will be "easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure they are working for the benefit of the community". CICs will report to an independent regulator on how they are delivering for the community and how they are involving their stakeholders in their activities. CICs

are aimed at organisations that are not charities but wish to guarantee they cannot be privatised once they have been set up.

CICs were introduced in the *Companies (Audit, Investigations and Community Enterprise) Act 2004*, and the main provisions on CICs come into force on 1 July 2005.

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Prior to that, in April, John Hanlon was appointed as the Community Interest Company Regulator, and the post is to be referred to as CREG. The Regulator's role will be as an independent, 'light touch regulator', who will encourage the development of the CICs by providing guidance and assistance. The CREG office will be in, but independent from, Companies House in Cardiff.

Jacqui Smith MP, then DTI Industry and Regions Minister, said at the time: "CICs are a ground-breaking new type of company designed for people who wish to establish social enterprises. They will be commercial enterprises, competing with other businesses but aiming to provide social benefits and will help to create new ways to provide goods and services."

The CREG has a range of powers to ensure confidence in CICs is not undermined including the ability to:

- Investigate (or appoint someone else to investigate) the affairs of a CIC.

- Remove or appoint directors.
- Bring civil proceedings in the name of a CIC.
- Present a petition to the Courts for the winding up of a CIC.
- Apply to the Court for an order that the dissolution of a CIC is void.

A CIC will either be formed from scratch, as a limited company, or will be created by the conversion of an existing company. The whole of existing company law and practice is applicable to CICs, together with the new provisions of the 2004 Companies Act and subsequent regulations. The fee for Incorporation or Conversion has been set at £15.

Charities, and all other organisations except political parties, will be able to establish CICs as subsidiaries. So a CT could convert its existing trading company, which is often in the form of a private limited liability company, into a CIC.

To ensure that CICs use their assets for community benefit, they will be prevented from distributing profits and assets to their members. This important attribute is known as an 'asset lock', a transparent and entrenched way of ensuring that assets cannot be used for private benefit.

In order to become a CIC, a company will have to satisfy a community interest test, confirming that it will pursue purposes beneficial to the community and will not serve an unduly restricted group of beneficiaries. The test is whether a reasonable person could consider the CICs activities to benefit the community.

Each CIC will be required to produce an annual community interest report, which will be made public. The report will record what the CIC has done to pursue the

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Council's given 'power to trade'

A completely different way for a CT to be involved in a trading company was opened up by Sections 95 and 96 of The Local Government Act 2003.

This gave local authorities (again, in England and Wales only, for the moment) the power to trade through a company in anything that they are authorised to do for the purpose of carrying on their ordinary functions. The regulations about 'function-related trading' are contained in the *Local Government (Best Value Authorities (Power to Trade) (England) Order 2004 (S.I. 2004/1705)*. This legislation applies only to best value authorities, that is, ones whose Comprehensive Performance Assessment (CPA) is 'excellent', 'good' or 'fair'.

It is understood that councils setting up a trading company can do this jointly with other organisations or businesses, and clearly this could be a local community transport operator.

community interest and involve its stakeholders during the year.

In order to raise investment for community purposes, CICs limited by shares will have the option of issuing shares that pay a dividend to investors. The dividend payable on these shares will be capped in order to protect the asset lock.

The CIC is intended to be used by social enterprises, non-profit-distributing organisations providing benefit to a community. Such businesses are presently active in areas such as childcare, social housing, leisure and community transport. Many of them already incorporate as companies, while others take the form of industrial and provident societies, the legal form for co-operatives.

The CIC will be an additional option, alongside existing forms. It will be particularly suitable for those social enterprises that wish to work

within the relative freedom of the non-charitable company form, but with a clear assurance of non-profit-distribution status. Being a CIC will not confer any special tax status. Since CICs will be used primarily for non-charitable activity, often involving trading, they will be competing with commercial organisations that do not enjoy tax incentives. Where appropriate, along with other social enterprises, CICs will be able to take advantage of the fiscal measures which the Government has introduced to promote enterprise in deprived areas, such as the Community Investment Tax Relief (CITR) scheme.

Applications from those wishing to form CICs, or from existing companies which wish to become CICs, will be accepted from July 2005.

Cooperatives UK, the organisation that helps CTA members to incorporate using the current CTA Model Rules, has asked that the industrial and provident society (IPS) form be similarly updated. It is possible that the IPS as a form could now be disadvantaged by the introduction of the CIC. An IPS is the only corporate form which ensures democratic participation of the key stakeholders within an enterprise. Nonetheless, Cooperatives UK welcomes the arrival of the CIC and intends embracing this new option by creating a Community Interest Company Co-operative Model. ■

Further information:

Charitable Incorporated Organisations
Charity Commission for England and Wales:
www.charity-commission.gov.uk

Charities Bill: www.publications.parliament.uk
Community Involvement Companies

Three explanatory booklets and factsheets are downloadable from the DTI website
www.dti.gov.uk/cics, along with other information about the progress of the CIC

The Office of the Regulator of Community Interest Companies (CREG), Room 3.68, Companies House, Crown Way, Cardiff, CF14 3UZ,
e-mail: creg@companieshouse.gov.uk

Social Enterprise Coalition:
www.socialenterprise.org.uk

Cooperatives UK: www.cooperatives-uk.coop