

(name of chapel)

transfer of the assets and liabilities of a charity known as (name) to (name) CIO

timetable draft revised 27/01/21

BASIC OVERVIEW OF A TYPICAL TIMETABLE FOR THE CREATION OF A CIO AND THE TRANSFER OF ASSETS

Prepared kindly by Roderick Ramage

NOTE This timetable and the draft documents are suggestions of what will probably be needed. What is actually done depends on the facts of each case and the wishes of the persons involved. The notes are, again, suggestions of some matters that might need to be considered. None of the timetable, draft documents and notes are or may be relied on as advice in any particular case.

	event	purpose	documents	date	comments
1	overview	Part A preparation Part A(i) Part A(ii) Part B Part C	checking powers and the decision to "convert" to CIO and authorise a sub-committee to implement the decision registration of the CIO "mini-audit" – fact gathering to ascertain what the existing charity has (assets and liabilities) which are to be transferred to and undertaken by the CIO the completion of the merger post completion (loose ends, registrations etc)		
2	Part A preparation				
3	committee (probably)	having decided that it might be beneficial to convert ¹ to CIO to review the existing charity's "corporate housekeeping" to ascertain whether the existing charity has the power to transfer to or merge into	existing deeds constitution		To check in particular: - the property settled on trust; - the purposes of the trust; - how trustees are appointed and cease to hold office - how the property is to be dealt with

¹ Legally the exercise is not a conversion, but the establishment of a CIO and the transfer of the present charity's assets and engagements to it. In practical terms it can be thought of as a conversion, and the Charity Commission itself talks of "converting" to a CIO.

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		another charity to ascertain has or may be authorised to exercise he power			if the trusts fail; <ul style="list-style-type: none">- whether there are powers to vary or terminate the trusts- whether the present trustees have been properly appointed;- how the congregation is constituted and governs itself;- whether the congregation and its constitution is compatible with and can be treated as part of the trusts of the property or are legally separate.
4	congregation or trustees ² - general meeting	to agree to "convert" the charity into a CIO by the transfer of assets and liabilities to alter the constitution to enable the transfer to be made unless the power is already there to appoint a sub-committee and authorise it to take all steps necessary to convert the charity to a CIO to nominate the first charity trustees ³ of the CIO	proposals and motion		The "conversion" involves the creation of a new body, the CIO, and the end of the present charity. The purpose of this meeting is that the congregation agrees the proposal to convert to a CIO and it or whoever has power agrees to do it and appoints a sub-committee to do all that is necessary apart from anything that needs to be done by the present committee or trustees.

² Commonly the members are the ultimate source of power in a chapel congregation's constitution but sometimes power, including power to alter the constitution is in the trustees and the members' role is passive, in which case the members might be informed and approve but have no legal power to make or block the decision.

³ The legislature in its wisdom has by s171 of the Charities Act 2011 given to the expression "charity trustee" a meaning which does not necessarily have any connection with the word "trustee" as normally used by the law. The members of the committee are but it is not clear that the

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		(normally the present charity's committee or trustees) to authorise the transfer of the charity's assets and engagements to the CIO to agree that that the charity's members automatically become members of the CIO ⁴ to authorise the dissolution of the charity on the completion of the transfers			
Part A(i) registration of CIO					
5	sub-committee	- notify GA of conversion if the charity is an excepted charity			
6		- agree charitable purposes acceptable to the Charity Commission	specimen purposes		The Charity Commission can be expected to make high handed demands for the use of what it mistakenly holds to be the standard Unitarian purposes.
7		- prepare CIO constitution and sign it	model articles (constitution)		
8		- apply to Charity Commission to register CIO			https://www.gov.uk/how-to-register-your-charity-cc21b

appointed trustees too are charity trustees. There is a brief note on the legal differences in the CIO pack The safe answer is probably to name all the members of the committee and the trustees. Only if one is sure that the trustees take no part in the control and management of the charity should they be omitted.

⁴ Even if the trustees make the conversion decision, this part of the motion can be decided by the members

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	event	purpose	documents	date	comments
					Then link to on-line application form.
9	CIO's charity trustees	<ul style="list-style-type: none">- appoint additional charity trustees (if needed) and officers- complete register of members (which means the charity trustees if the CIO is foundation)			
Part A(ii) tasks leading to the transfer⁵					
10	preamble	This Part should be started while the registration of the CIO is underway . When the CIO is registered it is an "empty box" and is to be filled with all the existing charity's assets and undertake its liabilities and responsibilities leaving the existing charity as the empty box.			
11	sub-committee	<ul style="list-style-type: none">- identify and list assets⁶			No need to "count the teaspoons"! Assets not in the charity's possession eg in custody or on loan to museums etc. The persons in possession of them must be identified so they can be required to acknowledge the transfer.
12		<ul style="list-style-type: none">- identify and list liabilities			
13		<ul style="list-style-type: none">- identify and list contracts			things that the charity pays uses or

⁵ The Charity Commission and other support bodies tend to skim lightly over the fact that is necessary to identify and transfer the existing charity's assets and liabilities, which can involve more work than registering the CIO.

⁶ There is a check list in the CIO pack, but each chapel is different from each other so the list cannot be comprehensive.

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		registrations etc to be novated ⁷ or transferred to the CIO			receives eg financial, power, telephone, maintenance, groups using the charity's premises etc.
14		- ascertain whether any of the other parties above need formal novation or prefer to terminate the contract with the existing charity and make a new one with the CIO.			Probably only the regular service suppliers. The sellers of occasional goods and services are likely in practice to transfer to the CIO simply by the ordering and payment by the CIO.
15		- ascertain whether anyone who works for the charity is an employee ⁸			
16		- register online with HMRC for gift aid reference number			It seems that initially HMRC permitted the transferee CIO to use the previous charity's gift aid registration number but does not now do so.
17		- check with bank for procedures to "transfer" accounts from charity to CIO			

⁷ Novation is usually a tri-partite agreement by which one party is released from a contract and is replaced by another. It is an alternative to terminating the contract with one party and making a new one with another party. In this context it is the present charity that is released and the CIO that becomes the new party.

⁸ The differences between employees, workers and independent contractors is not always clear and needs to be reviewed. The transfer will be a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and, accordingly, the contracts of employment of the employees (and probably workers) will be transferred to the CIO pursuant to those regulations. If the existing charity contributes to personal pension schemes for employees or workers, its obligation to do so passes under TUPE, but if to an occupational pension scheme, eg NEST, the obligation does not transfer. In the latter case the existing charity and the CIO will need to arrange for the transferees to participate in a pension scheme in the place of the former. The existing charity's arrangements to comply with the automatic enrolment requirement in the Pensions Act 2008 (including any person's opting-out) does not pass under TUPE and the CIO will have to make new automatic enrolment arrangements to comply with them.

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18		- check with investment managers & advisers for procedures to "transfer" accounts from charity to CIO			
19		- obtain authority from the existing charities charity trustees for two (or other preferred number) of them to sign documents.	authority		Charities Act 2011 s333.
20		- prepare pre-merger vesting declaration ⁹	vesting declaration		Charities Act 2011 s310. If this is needed it must be executed by the existing charity's charity trustees or persons authorised by them.
21		- consider transfer agreement for the above ¹⁰	transfer agreement		
22		- apply to charity Commission for scheme of for authority			eg

⁹ A per-merger vesting declaration may be used but is not obligatory. The fact that it vests property in the transferee automatically could tempt the existing charity to move directly to the declaration and assume that all will be well. A pre-merger vesting agreement is often (almost) all that is necessary, but should nevertheless be done with caution, because, for example:

- (a) the vesting declaration does not transfer liabilities or ongoing contractually obligations;
- (b) specified trust property (eg land held as security for money, shares and stocks etc) is not transferred atomically);
- (c) employment transfers must be dealt with under TUPE; AND
- (d) includes property held on trust for the present charity, so should not be used if property is held by a custodian trustee such as the B&FUA and the parties wish it to remain the custodian trustee but for the CIO instead of the present charity.

¹⁰ It is not essential but some congregations might find it useful to make an agreement between the existing trustees and the CIO to set out all the terms of the transfer either instead of or in addition to a vesting declaration. A vesting declaration transfers everything (except as above) catches anything accidentally omitted.

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	event	purpose	documents	date	comments
					to obtain powers not in existing trust deeds change existing objects or sue of permanent endowment.
23		- agree with landlord for transfer of lease or surrender and grant of new lease	transfer or surrender of existing lease and grant of new lease		
24		- agree with minister to novate or make new minister's contract ¹¹	novation of minister's contract		
25		- agree whether and if to for existing custodianships with B&FUA of Official Custodian etc are to continue	custodianship agreement		As the CIO is a legal person and continues notwithstanding changes of its members and charity trustees, the chapel buildings and other properties could be held directly by the CIO. Some congregations on converting to CIO have decided to continue existing custodianship agreements.
26		- prepare HM Land Registry forms	transfer on form TR1		If the title land and buildings are to registered at HMLR or the title transferred to the CIO. Not needed if existing custodianships are to continue.
27		- prepare resolution of deed to dissolve the present charity ¹²	deed of dissolution		This will include an indemnity of the existing charity's commit members and trustees.

¹¹ Ministers of religion are office holders and not employees. Any attempt to change ministers' status to that of employees is likely to have very serious adverse consequences for the Ministers' Pension Fund. Ministers are however workers and subject to the requirement to be enrolled automatically into a pension scheme but may opt out.

¹² The registration of the merger of the present charity into the CIO will result in the present charity being removed from the register of charities but does not automatically terminate its trusts.

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28	Part B completion of merger				
29	timing	If the transfer date can be agreed to coincide with the existing charity's year end, it will avoid the need for part year accounts. Otherwise (to simplify accounting and comparisons) treasurers might prefer a transfer date three six or nine month away from the year end. Treasurers might prefer to prepare accounts on a cash rather than an accrual basis, so that if the existing charity receives any income or make any payment after the transfer date, it is treated as doing it for and on behalf of the CIO, and correspondingly if the CIO does something before the transfer date.			
30	trustees and committee	to execute transfer agreement, and any other necessary agreements	minutes transfer agreement vesting declaration transfer or surrender of existing lease and grant of new lease novation of minister's contract custodianship agreement dissolution deed		
31	CIO	to execute transfer of existing of grant of new lease and any other necessary agreements ¹³ to execute novation of minister's agreement	minutes transfer agreement transfer or surrender of existing lease and grant of new lease novation of minister's contract		

¹³ The CIO is not required to execute a pre-merger vesting declaration

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			custodianship agreement		
32	Part C post completion (loose ends, registrations etc)				
33	sub-committee	- notification for entry in register of charity merger ¹⁴			
34		- report to congregation			
35		- report or returns as necessary to Charity Commission			
36		- registration of transfer to property at HMLR			
37		- notifications of transfer to contractors and suppliers as agreed above			
38		- to implement the members' resolution to dissolve old charity	winding up deed		

¹⁴ Charities Act 2011, part 16 s305 ff.. Notification is expected to be made online. If the existing charity is excepted under the GA umbrella it does not have a registration number and, in my experience, its merger cannot be registered on-line. Therefore the form should be printed and sent to the CC with an explanation, which, in my experience, will result in the merger being duly registered. An importance of registration is that gifts to the transfer charity, which are lost when the transferor ceases to exist, are preserved if the merger had been registered: ib s311.