

Changes in the Companies Act 2006



This toolkit provides an overview, information and clarification about the changes in the Companies Act 2006.

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Introduction

Whether you are a small or large voluntary organisation the changes in the Companies Act 2006 will have some impact on you. The Companies Act 2006 will bring important changes that affect how companies are organised. The impact may not be significant in all organisations, but for some it makes a great deal of difference to the way they operate.

For some organisations it might mean small amendments to your constitution, to others it could be that you consider changing your legal structure to become a Company Limited by Guarantee or a Charitable Incorporated Organisation or a Community Interest Company.

Changes in the law aim to give clarity and simplify procedures and this toolkit has been produced to help you understand those changes.

The information contained in this toolkit is not exhaustive and further detailed information and guidance notes can be obtained from Companies House.



Who is Affected?

The Companies Act 2006 affects:

- All organisations that are registered as companies
- Companies limited by guarantee or shares
- Charitable and non-charitable companies
- Community Interest Companies.



A Brief History

Company Law has developed and changed over time and the Companies Act 2006 is the latest Act to become law. It aims to reduce bureaucracy and give some consolidation and modernisation of previous Company Law.

Companies have had to register formally for over 150 years. Between 1998 and 2001 there was a significant Company Law Review and the Company Law Reform Bill was given Royal Assent in 2005 and implementation began in January 2007. Final implementation of the Companies Act 2006 will take place in October 2009.



Key Changes

There are some important changes that need to be acted upon to ensure that your organisation continues to operate within the law. You need to know how these changes affect your organisation and what you need to do. If you are a director or trustee of an organisation these changes will be particularly important to you.

Roles and responsibilities

- **Directors' duties** – there are new duties for directors that include the duty to act in a way they consider, in good faith, would be most likely to achieve the purposes of the company
- **Directors** – will be allowed to use a “service address” instead of their home address
- **Chair's casting vote** – the Chair can no longer have the casting vote under articles adopted after 1st October 2007 (except where it was previously permitted by articles). The chair's casting vote is now only valid for the purposes of a general meeting if it is in the articles of a company that was formed before 30th September 2007. However, this does not apply to meetings of the directors where a casting vote is still allowed

- **Company Secretary** – it is no longer necessary to have a company secretary unless your company articles say so. However the duties of a company secretary still remain, so someone will have to carry out the work. It is up to the directors to decide whether or not to have a company secretary
- **Members' right to appoint proxies** – members of charitable companies now have the right to appoint a proxy or proxies. This is a statutory right, even if the company articles say there is no right. Details of the right of a member to appoint a proxy must be put in the notice of meetings and notices of general meetings must refer to this right. It is a criminal offence not to do this
- **Minimum age of directors** – the minimum age of directors is now 16 years of age. Anyone under this age is not permitted to be a director. It should also be noted that a person under 18 cannot be a trustee where the charity is an unincorporated association or trust
- **One director to be a natural person** – a company must have at least one director who is a natural person (i.e. human being rather than a corporate body – Section 155, Companies Act 2006)



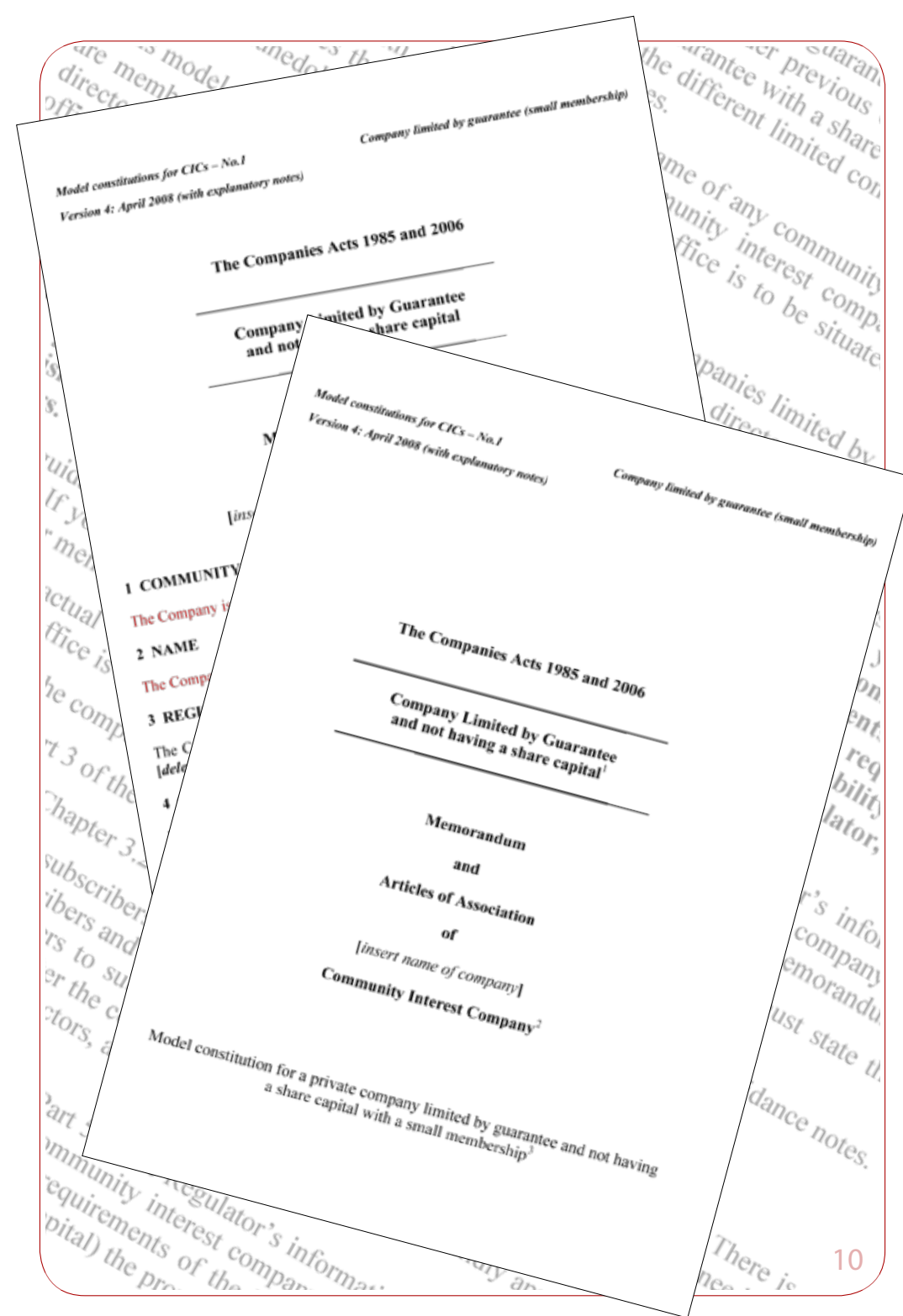
Electronic communications

- Formal correspondence can now be sent by email. New provisions have set out a framework in which companies can communicate with their members via email or website. This is as long as the members agree. The rules regarding information about companies (i.e. registered name, address, number etc) have been extended to emails which are business letters. Emails can be sent regarding proxy voting papers and notices of meetings where the email address has been given in the relevant notice



Changes to come into effect from October 2009

- There will be one single document – the Articles of Association for companies to regulate administration with (Any companies set up before October 2009 that have a Memorandum and Articles of Association will not have to make changes)
- The Charity Commission will be required to give notice to the Registrar of Companies when a charitable company appoints an interim manager
- A court order will not be required in every case to re-instate a company to the Companies Register



A New Legal Structure

What is a Community Interest Company?

A Community Interest Company (CIC) is a new legal structure that was created by the Companies (Audit, Investigations Community Enterprises) Act 2004. The CIC structure has been available for social or community enterprises since 1st July 2005 and by April 2009 there have been 2,659 CICs registered at Companies House.

There are three different forms of CIC :

- Company limited by shares
- Company limited by guarantee
- Public limited company (plc)

A CIC is a business that is governed by company law and cannot be registered as a charity. However a registered charity can convert into a CIC if the Charity Commission gives permission.



Key features of CIC

There are a number of characteristics of a CIC that should be noted:

- It must have aims and objects, and the activities must be 'for the benefit of the community'
- It can offer a flexible company structure
- It can access a range of financing options which can be attractive to those working for a social purpose. However, a CIC cannot access some funds that are available to charities
- There will be a reasonable limit on directors' salaries and benefits. This makes a CIC's obligation to operate "for the benefit of the community" more transparent
- It must have a limit on what percentage of income or profits can be paid to investors as dividends or loan interest repayments
- There is no restriction on commercial taxable trading
- There is no entitlement to tax and rate exemptions, or business rates relief
- Assets must be retained within the CIC. This means assets must be used for the benefit of the community and used only for the objects (aims) of the CIC
- Assets must not be sold (or transferred) for less than their market value unless transferred to another asset locked organisation (e.g. another CIC or charity)

- The Annual Report must produce specific information to justify why and how it benefits the community. This includes showing how it involves its stakeholders
- Annual accounts and annual returns must be filed within the time limits otherwise an automatic fine will be incurred
- Any changes of directors, change of address of registered office, or change of address where company records are kept must be notified to Companies House within 14 days using forms specified by Companies House

Duties and responsibilities of a CIC director

There are a number of things to be considered by directors of a CIC:

- Company directors have specific duties to members of the company, customers, stakeholders and Companies House
- Each director has a duty to act honestly and in good faith regarding membership of the CIC
- Directors must conduct company business with reasonable skill and care, this includes promoting the company for the benefit of the members
- All directors should declare their personal financial interests in their company's dealings
- No director must act whilst disqualified (e.g. criminal convictions for dishonesty etc)
- It is good practice for directors to hold an Annual General Meeting, even though there is no legal requirement

Registering as a CIC

Your organisation may be considering becoming a CIC; however it is important that your organisation fully considers the implications of this change. There are a number of questions to ask such as 'where are we now as an organisation', 'are we meeting the needs of our community', 'is our existing governing document reflecting what we are doing', 'do we have an annual turnover of £5,000+', 'do we want to have paid workers', 'do we want to lease or buy property'?

Whether or not you make any changes to your organisational structure will depend on the answers to the above questions. These may be the biggest steps you take as an organisation and should be considered carefully.

If your organisation does proceed to register as a CIC there are a number of documents to submit to Companies House, along with a filing fee of £35.00.

The documents are:

- The **Memorandum and Articles** that conform to the model for a CIC
- **Companies CIC 36** – the CIC statement
- **Companies Form 10** – the declaration of first directors and company secretary
- **Companies Form 12** – the application to register as a limited company

All applications are examined by the CIC Regulator before they are passed to the Registrar of Companies. Successful applications are registered by the Registrar who will issue the relevant documents.

If the Regulator declines an application then the Registrar is notified and the decision and the reasons will be sent to the applicant. Applicants can appeal against the decision initially to the Regulator who will forward this to an independent Appeals Officer appointed by the Secretary of State. Appeals must be filed within 2 months of the Regulator's decision.

CIC 36

Declarations on Formation of a Community Interest Company

*Please
complete in
typescript,
or in bold
black
capitals.*

Company Name in full

| |
|----------------------------|
| |
| |
| Community Interest Company |

SECTION A: COMMUNITY INTEREST STATEMENT – beneficiaries

1. We/I, the undersigned, declare that the company will carry on its activities for the benefit of the community, or a section of the community¹. [Insert a short description of the community, or section of the community, which it is intended that the company will benefit in the space provided below]²

The company's activities will provide benefit to ...

Future amendments affecting CICs

Consultations and amendments are still taking place regarding CIC's. A recent consultation (finished on 6th April 2009) was aimed at gaining a better understanding of restrictions on distributions and interest paid. The response to this consultation will inform the Regulator's decision whether or not to amend the 'caps' on distribution and interest paid.

Within the voluntary and community sector a number of debates have taken place on this issue. The provisions on the limit of distribution are intended to ensure that private investors / financiers would not receive a disproportionate rate of return. Whenever there have been distributable profits, the majority of these would be put back into the business or used for the benefit of the community. This is instead of distributing dividends to private investors.

A further consultation (June 2009) is looking at changes to the CIC Regulator, which should clarify changes and provide an update of regulations.

For more information on any of the sections of this toolkit there is further guidance available from Companies House.



Contacts and Publications

Business Link Yorkshire

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CIC Regulator

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Pay and Employment Rights Service (PERS)

Tel: 01924 428033 Advice Line: 01924 428030

Email: admin@pers.org.uk Web: www.pers.org.uk

Voluntary Action Wakefield District (VAWD)

11 Upper York Street, Wakefield WF1 3LQ

Tel: 01924 367418 Email: ask@vawd.org.uk

Web: www.vawd.org.uk

West Yorkshire Community Accounting Service (WYCAS)

PO Box 1416, Huddersfield HD1 9AJ Tel: 01484 543251

Email: info@wycas.org.uk Web: www.wycas.org.uk



The following publication can be obtained from the Charity Commission Website - www.charity-commission.gov.uk :

➤ **CC15a – Charity Reporting and Accounting: The Essentials**

Available via Sandy Adirondack's website - www.sandy-a.co.uk/books.htm :

➤ **The Voluntary Sector Legal Handbook by Adirondack & Taylor - Directory of Social Change**

Other toolkits in this series:

- **New Groups' Guide to Starting Up - First Steps**
- **New Groups' Guide to Starting Up - Project Planning**
- **'Do It Yourself' Fundraising**
- **Safeguarding Children and Vulnerable Adults**
- **Involving Volunteers in Your Organisation**
- **Changes in Charity Law 2006**

Forthcoming titles include:

➤ **Monitoring and Evaluation**

Contact Voluntary Action Wakefield District for copies or follow the '**Services for Groups**' and '**Group Development Service**' links on their website to download pdf versions.



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