YR EGLWYS YNG NGHYMRU THE CHURCH IN WALES

CORFF CYNRYCHIOLWYR YR EGLWYS YNG NGHYMRU
THE REPRESENTATIVE BODY OF THE CHURCH IN WALES

Charitable Incorporated Organisations ('CIOs')
Mission/Ministry Area CIO Template Constitution – Accompanying Note
Version 2024.01

Note – this document is provided as general background for the Template Church in Wales Mission/Ministry Area CIO document, and to outline the process that a MAC will need to undertake to form a CIO. It is not specific legal advice to any MAC or any trustee. MACs seeking specific legal advice should consider speaking to their Diocesan Registrar or another lawyer specialising in this area of law.

Introduction and Background

1. In autumn 2022 the Charity Commission approved a template constitution which Church in Wales MACs will be required to use when setting up a CIO. Following a small pilot project to test the new template document and registration process with the Charity Commission, the Governing Body authorised the wider roll-out of the process to any interested MA in September 2023. Following changes made by UK Government to the Charities Act, a second version of the template (with minor updates) was introduced in 2024.

What is a CIO?

2. Until relatively recently, a charity could either be unincorporated, or could incorporate as a company. Unincorporated charities do not have what lawyers refer to as 'separate legal personality'. This means that contracts entered into by them are in fact not entered into by the charity itself, but rather by the group of individual trustees. This means in theory, that any individual trustee can be pursued for any debts owed by the charity (a position which can be mitigated to a certain extent by insurance).

3. On the other hand, charitable companies do benefit from separate legal personality and limited liability, but are subject to dual regulation by both Companies House (under the Companies Acts) and the Charity Commission

(under the Charities Acts). This was a significant administrative burden, particularly for smaller charities.

4. Parochial Church Councils and Mission/Ministry Area Councils in the Church in Wales are currently unincorporated. As more of them begin to undertake tasks such as the direct employment of staff, or major contractual commitments such as building projects, the risks for individual trustees of unincorporated charities increases.

5. A CIO is a relatively new means of establishing a charity with separate legal personality and limited liability. Regulation is by the Charity Commission alone.

The Template Document – General Points to Note

6. Ensure that you are using the latest version of the template (January 2024). Due to recent changes in UK Government legislation, the Charity Commission will reject an application to register a CIO using any previous version of the template.

7. The template seeks to balance two competing requirements:

    a. A legal requirement for any CIO constitution to have certain required 'boilerplate' clauses in it, pursuant to *The Charitable Incorporated Organisations (General) Regulations 2012* and other charity legislation.

    b. A clear direction from the Standing Committee of the Governing Body to retain the primacy of the Constitution of the Church in Wales, and the existing powers of the Diocesan Bishop and Diocesan Conference in the general provisions for the administration of Mission/Ministry Areas across the Church in Wales.

8. The basic model that has been devised and agreed with the Charity Commission is as follows:

    a. The MAC members are the charity trustees and defined throughout the document as Trustee. This retains the current position with non-incorporated MACs, and is consistent with the civil law definition that the charity trustees are the persons in day-to-day control of the charity's affairs;

    b. There are three categories of Members (as opposed to Trustees) of the CIO:

        i. Vestry Members. This is primarily to satisfy legal provisions for the holding of an annual general meeting. The Vestry meeting

will serve as the Charity's AGM and the Vestry Members will elect certain Trustees (MAC members), just as they do now, in accordance with the Constitution of the Church in Wales.

ii. The Bishop Member (the Bishop of the Diocese). This is because a CIO constitution must have written provisions for how the members (rather than anybody else) can wind-up or merge the charity. "Mergers" in the Church in Wales are undertaken by way of parochial reorganization under a Diocesan Decree, signed by the Bishop of the Diocese. Essentially, this drafting is a mechanism to ensure that Diocesan Decrees are effective in reorganising the relevant CIOs at the same time as the Mission/Ministry Areas themselves are reorganised. The existing provisions of the Constitution (including the requirement for consent of the Diocesan Conference or Standing Committee before finalising the reorganisation of Mission/Ministry Areas) remain.

iii. The Corporate Member (the RB, or such other corporate body as the Governing Body may from time-to-time nominate). This is because a CIO constitution must have written provision for how the members (as opposed to anybody else) can amend their constitution. To ensure that there is one single national model for CIO constitutions across the Church in Wales the same corporate member is appointed to each CIO. The powers of the Corporate Member are extremely limited, and are only likely to be used where the Governing Body requests that changes are made to *all* Church in Wales Mission/Ministry Area CIO constitutions.

9. PCC/MAC members are selected in the same way as they are now, with cross-references the Constitution of the Church in Wales (see clause 13.1)

10. The Template constitution is an unavoidably lengthy document; the vast majority of the drafting is standard 'boilerplate', with detailed provisions relating to matters including conflict of interest, trustees supplying services to the charity, execution of documents *etc*. These are clauses required by the Charity Commission and the general law.

General Points the Setting-up of a MA CIO

11. The MAC should resolve in principle to proceed with the setting up of the CIO and then consult their Archdeacon (this consultation is a constitutional requirement). The Archdeacon may wish to satisfy themselves that the MAC members understand the administrative steps that will need to be undertaken

12. Once they have consulted their Archdeacon, the MAC should resolve to adopt the Template constitution at a duly constituted MAC meeting. Ahead of that meeting the various square-bracketed fields in the Constitution must be completed so that you have a final form document ready for signing. You should liaise with your Archdeacon or Diocesan Registrar if you have any queries in filling out the template. Other than the square-bracketed fields, and the fields highlighted in yellow, the template document must not be altered.

13. Once you have resolved to adopt the template constitution, you may apply to the Charity Commission for registration. If the registration application is successful the CIO will have a new charity number.

14. The RB has prepared a separate guidance document dealing with the registration process, and offering advice about various post registration matters. Further advice may be available from your Archdeacon or Diocesan Registrar and you may need specific independent legal advice on certain issues (particularly if your MAC employs staff, who will need to transfer across to the CIO).

Limitations of the Template Document

15. The template may only be used where a Mission/Ministry Area has been created and the former parishes all merged into one parochial unit. If in doubt about this point, please contact your Archdeacon, Diocesan Registrar or the RB.

16. The template is not suitable for use by Cathedrals or any MA which includes a Cathedral. Cathedrals should take individual legal advice about appropriate governance arrangements.

Legal Department
The Representative Body of the Church in Wales
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